

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-7696

ORIGINAL

In The  
**United States Court of Appeals**  
For The Second Circuit

KURT SCHMIEDER,

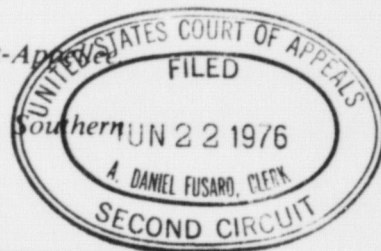
*Plaintiff-Appellant,*

vs.

LOUIS H. HALL, as executor of the estate of HELEN B.  
DWYER, deceased,

*Defendant-Appellee*

*On Appeal from the United States District Court, Southern  
District of New York.*



**JOINT APPENDIX**  
Volume II, 301a - 617a

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2 was a fund in her own name that had been seized and she was  
3 trying to litigate this on the fund, the validity of this  
4 claim, so that she was disassociating herself totally from  
5 this.

6 MR. DUFFY: I presume you are going to offer  
7 proof on that.

8 MR. MARTIN: You have to offer proof in the first  
9 instance that this is admissible and I don't see how this  
10 can be admitted.

11 MR. DUFFY: I think it comes in under a number of  
12 recognized exceptions. The only objection to it is the hear-  
13 say objection. That is a copy of a document contained in  
14 the Government's files. It is more than 25 years old.

15 THE COURT: What exceptions does it come under?

16 MR. DUFFY: Under the admission against interest,  
17 notwithstanding Mr. Martin's comments. It is an ancient  
18 document. It is found in the Government's files on these  
19 matters, a place where one might expect it to be. It is  
20 validity has not been questioned over a long period of  
21 time. The declarant is now dead. It is a statement under  
22 oath.

23 MR. MARTIN: So it is clear, I am not objecting  
24 on the ground that this isn't something from the  
25 Government's files. That simply gets you to the -- it is

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2 authentic, signed by Jenny Bochman.

3 THE COURT: It is a statement under oath. It  
4 appears on its face to be in furtherance of something she  
5 was trying to accomplish. The last paragraph seems to make  
6 that clear.

7 (Pause.)

8 THE COURT: Well, I will take it subject to brief-  
9 ing.

10 (Plaintiff's Exhibit 8-B received in  
11 evidence.)

12 MR. DUFFY: Your Honor, I would offer Plaintiff's  
13 Exhibits 9 and 10. I will refer to them as a unit because  
14 they largely cover the same ground. 9 is a memorandum from  
15 Helen B. Dwyer --

16 THE COURT: 9 doesn't seem to be listed here.  
17 We go from 8 to 10.

18 MR. DUFFY: It was listed in our order.

19 MR. MARTIN: It was listed basically under things  
20 which there is no objection to. That is a different  
21 schedule.

22 THE COURT: So 9 you don't object to.

23 MR. DUFFY: I thought Mr. Martin was going to  
24 object to that.

25 THE COURT: What are they offered to prove?



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2 MR. DUFFY: 9-A, B and C are an affidavit from  
3 Helen B. Dwyer in support of her motion for summary judgment;  
4 B is the transcript of her examination before trial --  
5 examination in the alien property custodian proceedings;  
6 and C, the letter from Mr. Dwyer to Mr. Landa.

7 There is a further document under 9 which apparently  
8 Mr. Martin hasn't marked anywhere, which is the memorandum  
9 I referred to.

10 MR. MARTIN: That fell through the cracks, I'm  
11 sorry. 9-B is --

12 MR. DUFFY: 9-A, B, C. But that is a memorandum  
13 appearing from Mrs. Helen Dwyer. I thought Mr. Martin  
14 stipulated to the authenticity of that document but had  
15 some relevance objections.

16 These documents talk about Mrs. Dwyer's relationships  
17 to the gifts.

18 THE COURT: I am going to have to read them.

19 MR. MARTIN: 9-C is the only one we would have  
20 objection to -- 9-D, I'm sorry. That is a memorandum which  
21 we found in the files, although unsigned, is apparently  
22 typed by Mrs. Dwyer. There are references that I did this,  
23 et cetera, which in the whole context give it the flavor  
24 that it was written by Mrs. Dwyer. We have some question  
25 as to its relevance in this proceeding.

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2 THE COURT: You don't concede it is probably  
3 written by Mrs. Dwyer?

4 MR. MARTIN: Yes. Contained in her files.  
5 A, B and C we have no objection to.

6 THE COURT: What in general do these things prove?

7 MR. DUFFY: These are Mrs. Dwyer's version of  
8 the events, her actions upon receipt of the property.

9 THE COURT: You say they prove your case and he  
10 says it proves his case, so I will have to read them.

11 MR. MARTIN: It is an offer in which I join, your  
12 Honor, rather than having objection.

13 MR. DUFFY: I think we are both anxious to have  
14 the Court read these documents.

15 (Plaintiff's Exhibits 9-A, B, C, D are received  
16 in evidence.)

17 MR. DUFFY: 10, your Honor, is a file consisting  
18 of Helen B. Dwyer's license applications to the Treasury  
19 Department in order to unblock various portions of the funds  
20 that had been blocked.

21 Shortly after the gift the Treasury Department  
22 blocked her accounts. These licenses deal with her efforts  
23 to obtain the use of some of those funds and contained  
24 statements concerning her living habits, spending habits  
25 and her need for funds.

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2 THE COURT: Why do you object to that?

3 MR. MARTIN: I have just decided I don't.

4 THE COURT: You have been sounding as though you  
5 would. It seems to me they show she was using the funds  
6 for herself, the way you describe them. It seems to me to  
7 show, from the way you describe it, that she used the funds  
8 for herself.

9 MR. DUFFY: I don't think it shows that. We would  
10 contend that it shows that her use of these funds was rather  
11 limited.

12 I would offer the entire series of exhibits under  
13 14, your Honor. These exhibits as a group are a large  
14 quantity of financial records that Mrs. Dwyer kept containing  
15 what I would contend to be minute detail of all securities  
16 transactions of hers from a period predating the gift up  
17 until the time of her death.

18 THE COURT: Assuming I decide for you, obviously  
19 they would be necessary for an accounting but how will they  
20 be necessary to help me decide this case?

21 MR. DUFFY: We would contend that these records  
22 are records in the nature of an ongoing account, and we  
23 would say, among other things, these records support our  
24 contention that she was a nominee, that she was continuously  
25 keeping an account of these funds.

1  
2 THE COURT: From what you tell me, and I think  
3 it was you that said it, that she was a compulsive record-  
4 keeper. You said that.

5 MR. DUFFY: I said that was one of the inferences  
6 that could be drawn from it.

7 THE COURT: I gather she kept all the accounts in  
8 this way, from the fact she was a compulsive record-keeper.  
9 How does it prove she is a nominee?

10 MR. DUFFY: I don't say it proves it conclusively.

11 THE COURT: How does it intend to prove it?  
12 If I have a secretary who is a compulsive record-keeper and  
13 keeps a record of every penny she ever spent in her life and  
14 I give her \$10,000 and she keeps on keeping records of  
15 that like she has kept it of everything else, how does it  
16 prove that the \$10,000 I have given her was as a nominee?

17 MR. DUFFY: In conjunction with other proof -- for  
18 instance, we contend she received the property and used very  
19 little of that property; that that in conjunction with  
20 the records she kept, these records support the conclusion  
21 that we urge that she only spent income. All of these  
22 things taken together we say leads to the inescapable con-  
23 clusion she was a nominee.

24 THE COURT: Are these records going to have bearing  
25 on the issues to whether she only spent income or whether



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2 she didn't?

3 MR. DUFFY: Yes.

4 THE COURT: You contend she only spent income?

5 MR. MARTIN: Yes.

6 THE COURT: You say these records aren't relevant  
7 to that issue?

8 MR. MARTIN: What I say is that these records,  
9 absent a man who has a lot more talent than I do in  
10 analyzing them, are not going to show you anything. They  
11 show a great list of purchases, but I don't think you can  
12 extract from them what Mr. Duffy said you can.

13 If the plaintiff wants to call to somebody and says  
14 that he has examined these and come to some conclusions,  
15 but I don't think those conclusions can be found in those  
16 records. She was a compulsive record-keeper. There are a  
17 lot of records. Obviously during all the time I was first  
18 decided to make a TFR report and during the alien property  
19 proceeding there was some reason to keep it separate because  
20 she was trying to figure out if she did keep those funds,  
21 what was what. I don't think they are relevant.

22 THE COURT: I will exclude them on the ground of  
23 relevance without prejudice to you reoffering them when  
24 you get an expert to tell us what they mean.

25 (Plaintiff's Exhibit 10 received in

evidence.)

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THE COURT: I have excluded then this whole 14 series.

MR. DUFFY: I would offer the transcript of the examination of John S. Whipple taken on -- that is 18-A?

MR. DUFFY: Yes, your Honor. I will offer that for the purpose of showing that Mr. Whipple, draftsman of the decedent's Massachusetts trust, had no direct contact with the decedent until after that trust instrument was signed, and also that the instructions that Mr. Whipple received concerning the remaindermen of that trust, namely Mr. Hall and his two sisters, came from Mr. Hall.

THE COURT: Do you dispute that?

MR. MARTIN: To some extent, your Honor. I think perhaps the thing to do on this is, "A" I have some question as to its relevance. It is a trust established in --

THE COURT: Let's get to that question later. First as to the facts, do you dispute them?

MR. MARTIN: Yes. When you talk about the Whipple transcript you have to talk about the Webber transcript. There was a trust established in Massachusetts. Mrs. Dwyer had a brokerage account handled by a man named Webber. Mrs. Dwyer came to the conclusion she wanted to have a trust set up so that things would be handled



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2 automatically without her involvement. She traveled a lot  
3 at that point in her life. She talked to Mr. Webber about  
4 this, who was her broker.

5 THE COURT: Webber?

6 MR. MARTIN: Yes. Webber said I'll do it and  
7 I'll serve as your trustee if my friend Whipple -- if I  
8 can pick the co-trustee. And the man I am going to pick is  
9 my friend Whipple. So that it was that way that Whipple  
10 came into the picture. Mr. Louis Hall, Jr. who was acting  
11 as -- for Mrs. Dwyer in this, then communicated with  
12 Whipple directly.

13 If you deem it relevant at all, I think we  
14 should put in both transcripts which give the whole picture.

15 THE COURT: Is that what happened?

16 MR. DUFFY: Well, in part that is what happened,  
17 your Honor. There is a certain timing sequence that Mr.  
18 Martin overlooks, and that is very shortly before the  
19 establishment of this trust Mr. Schmieder was successful  
20 in locating Mrs. Dwyer and communicated with her.

21 THE COURT: That is another fact. It has nothing  
22 to do with either Webber nor Whipple.

23 MR. DUFFY: That is true. I think it is susceptible  
24 of a much different interpretation as to how it occurred.

THE COURT: You are not going to get that out of

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2 the two depositions.

3 MR. MARTIN: I think it would be helpful to have  
4 them in. Mr. Webber makes very clear, for example, that  
5 Mrs. Dwyer was a lady who made her own decisions; that  
6 she handled this property, her own assets. Let's have the  
7 whole thing in.

8 MR. DUFFY: It is up to Mr. Martin if he wants to  
9 put that in. I am just offering the Whipple transcript to  
10 prove a few basic facts.

11 THE COURT: Webber doesn't seem to be listed here?

12 MR. DUFFY: Yes, 21.

13 MR. MARTIN: Webber is 21 and Whipple is 18.

14 MR. DUFFY: I think we marked that 21. We  
15 would urge Mr. Martin to put that in if he wants. It is  
16 clear from the Whipple transcript that he was the draftsman  
17 of the trust and he received instructions from Mr. Hall  
18 and he had no contact with Mrs. Dwyer prior to the  
19 execution of that document.

20 THE COURT: So 18-A and 21-A are received.

21 (Plaintiff's Exhibit 18-A and 21-A are  
22 received in evidence.)

23 THE COURT: There are two 21-As here?

24 MR. DUFFY: They are not on my list.

25 MR. MARTIN: I think, if it would be agreeable, we



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2 should simply mark as a series all of those exhibits  
3 marked in that deposition. We have a folder here that  
4 identifies them as 18-B or Mr. Whipple and 21-A -- 18-A  
5 would be Mr. Whipple's deposition and 18-B would be  
6 the exhibits. 21-A would be Mr. Webber's deposition and 21-B  
7 would be the exhibits to that deposition.

8 (Plaintiff's Exhibits 18-A and 18-B and 21-A and  
9 21-B received in evidence.)

xx

10 THE COURT: The two of them show what Mr. Webber  
11 and Mr. Whipple know about the establishment of this trust,  
12 and then as another fact which Mr. Duffy thinks is important  
13 is that this trust was established on what date?

14 MR. DUFFY: Established in late 1968.

15 THE COURT: When was the first time Mrs. Dwyer  
16 heard from Schmieder?

17 MR. DUFFY: Approximately one year earlier.

18 THE COURT: One year?

19 MR. DUFFY: One year.

20 MR. MARTIN: If you want to get into that, your  
21 Honor, I think then we should have the exchange of  
22 correspondence which Mr. Duffy did not offer with Mr. Sanborn's  
23 deposition, I note. There was an exchange of correspondence  
24 which was covered in Mr. Sanborn's deposition.

25 THE COURT: Isn't that the exhibits in the Sanborn

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2 deposition?

3 MR. MARTIN: Yes.

4 MR. DUFFY: I have no objection to offering all  
5 the exhibits to the depositions.

6 MR. MARTIN: Those that you are speaking with  
7 Webber and Whipple. In 1967 when Schmieder attempts to  
8 contact Mrs. Dwyer, the response comes through Mr. Sanborn  
9 who says that I have been retained by Mrs. Dwyer and  
10 in effect tells him that Mrs. Dwyer --

11 THE COURT: We have an affidavit from him.

12 MR. MARTIN: Yes. Sanborn, you may recall, your  
13 Honor, was with the Putney Twombly firm up to 1952 when  
14 he went over to Germany to serve on the International Court.  
15 He came back in '67.

16 THE COURT: We have an affidavit from him.

17 MR. MARTIN: That was offered simply to show that  
18 the work that the Putney Twombly firm did in the alien  
19 property proceeding. He was also examined in an examination  
20 before trial in the Surrogate's proceeding and it was in  
21 connection with that that they were marked as exhibits to  
22 his transcript, the exchange of correspondence he had with  
23 Mrs. Dwyer and Mr. Schmieder.

24 THE COURT: I suppose that would be admissible,  
25 too.



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2 MR. DUFFY: I have no objection to offering all of  
3 the exhibits.

4 THE COURT: I'm trying to get some idea of  
5 what the relevance is as they are being offered. I don't  
6 want to spend my summer going through these things hoping  
7 I will find out what you people are trying to prove.

8 MR. DUFFY: I would hope we can supply your Honor  
9 with a memorandum to eliminate some of that.

10 MR. MARTIN: Your Honor, in Sanborn's deposition  
11 there were a number of documents marked that are  
12 irrelevant. What I will suggest over the luncheon recess  
13 I will pull out the relevant correspondence and we can mark  
14 them later.

15 MR. DUFFY: Your Honor, I would offer the decision  
16 of Judge Holtzoff denying Helen B. Dwyer's motion for summary  
17 judgment in the Washington D.C. action. That is on the  
18 pretrial order list.

19 THE COURT: Let me see that.

20 Mr. Pendleton is who?

21 MR. DUFFY: He is one of the attorneys that the  
22 Hall firm retained to assist them in the connection with  
23 that action, your Honor.

24 THE COURT: This is excluded. All that Judge  
25 Holtzoff decided was, "I think there is a material issue of

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2 fact as to whether the plaintiff is the beneficial owner of  
3 this property and that cannot be determined as a question of  
4 law."

5 So I don't see that it is relevant. Excluded.

6 MR. DUFFY: Doesn't he also say, your Honor,  
7 if this case were on trial before me I would be inclined  
8 to hold on the basis of the undisputed evidence?

9 THE COURT: That is what he said he would be in-  
10 clined to do if something were before him. What he would  
11 be inclined to do if he had the problem is not relevant.

12 MR. DUFFY: Your Honor, I would just like to draw  
13 your attention to the exhibits marked or noted at page 2  
14 of Mr. Turchin's pretrial order or on schedule A of our  
15 pretrial order. All of those exhibits counsel for both  
16 sides have agreed should be received into evidence.

17 THE COURT: What do they prove and what do you  
18 contend they prove?

19 MR. DUFFY: I think each one of us intends to  
20 rely on them for various aspects of our respective cases.  
21 The Stoneleigh records, which are under 7-A and following,  
22 show the involvement of Mr. Hall and members of his firm  
23 to the gift transaction per se and the initial fund that  
24 was transferred to Mrs. Dwyer.

25 9-A, B and C we have already discussed.



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2 1-A and B is his vesting order and the amendment  
3 to the vesting order. That shoes the property allegedly  
4 Kurt Schmieder's property that the Government was seeking  
5 to vest.

6 13 is the letter sent to McGrath which identifies  
7 the specific property that was turned over to Mrs. Dwyer  
8 upon settlement of the suit.

9 This series of records shows the transfer of  
10 the property into Stoneleigh, Stoneleigh to Dwyer, Dwyer  
11 to the Government and then back out to Dwyer again.

12 THE COURT: It doesn't really show anything that  
13 is in much dispute, does it?

14 MR. MARTIN: No, your Honor. The records are here.

15 THE COURT: I don't have to read this stuff to  
16 decide the question before me, I gather.

17 MR. MARTIN: No, but I would like to have them  
18 in evidence so we may refer to them.

19 MR. DUFFY: That goes for both sides.

20 THE COURT: I'm just trying to get a feeling  
21 as to what is relevant to the decision I have to make.

22 MR. DUFFY: Your Honor, I offered before --

23 THE COURT: I want to interrupt you now. People  
24 are waiting, the people who are going to testify. Shouldn't  
25 we call the live witnesses and then let them go about their

1 rdrf

2 business?

3 MR. DUFFY: We just have a gentleman here for the  
4 purpose of authenticating certain records. I thought  
5 Mr. Turchin would agree that it would be unnecessary to call  
6 him but we counsel reached such an agreement.

7 MR. MARTIN: We wanted to see what the records  
8 were and find out what we could about them before we  
9 stipulated, your Honor.

10 THE COURT: Well, then, maybe during lunch hour  
11 you can find out.

12 MR. MARTIN: We will talk to the gentleman over  
13 lunch hour and see what he has and dispose of him.

14 If we could pass to something else over the lunch  
15 hour, we can have the clerk mark all those Stoneleigh records  
16 and the vesting records.

17 THE COURT: Yes.

18 MR. DUFFY: Your Honor, at this point I am ready  
19 to proceed with Mr. Hall.

20 THE COURT: All right.

21 Would it be more convenient for you to break for  
22 lunch now and put Mr. Hall on after lunch?

23 THE COURT: I'm rather concerned about this  
24 gentleman from Bankers Trust. I was totally unaware he  
25 was here from Bankers Trust. If we could accommodate



1 rdrf

2 him I would like to.

3 THE COURT: I take an hour and a quarter for  
4 lunch.

5 MR. MARTIN: Maybe we will be able to bid this man  
6 farewell before you come back.

7 THE COURT: Then I will adjourn until a quarter of  
8 2:00.

9 (Luncheon recess.)

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1 eljp 1

2 (In open Court.)

3 THE COURT: Are you ready?

4 MR. DUFFY: Your Honor, before we begin, I  
5 discussed this with Mr. Martin a minute ago. This is a  
6 copy of the document in the Government's files that Mr.  
7 Schaeffer just brought over to us. It's one of the old  
8 black on white, you know, reverse or negative type of photo-  
9 copies. Unfortunately it doesn't copy very well. Mr.  
10 Martin would prefer that the original be here.

11 Is there any way that the Court could requisition--  
12

13 THE COURT: Where is the original?

14 MR. DUFFY: With Mr. Schaeffer in the U.S.  
15 Attorney's office.

16 MR. MARTIN: I am sure if we have your Honor  
17 ask Mr. Schaeffer to produce the documents, he would have  
18 them here for us.

19 THE COURT: All right. Would you communicate  
20 my desire to Mr. Schaeffer?

21 MR. MARTIN: Since he is on your side.

22 THE COURT: All right. Communicate my desire  
23 to Mr. Schaeffer.

24 MR. DUFFY: I believe before we recessed we were  
25 about ready to call Mr. Hall to the stand.



1 eljp 2

2 MR. MARTIN: Before we recessed there was a  
3 gentleman here from the Bankers Trust. He produced certain  
4 records pursuant to subpoena. Do you want to put those in?

5 MR. DUFFY: I am not so certain I want to burden  
6 the record with these.

7 MR. MARTIN: I think we should, so the record  
8 is clear, indicate that a representative of the Bankers  
9 Trust Company arrived and produced pursuant to Mr. Duffy's  
10 subpoena some bank records of Helen Dwyer that apparently  
11 go back only to 6/8/65 and then continue forward until 1970  
12 when the account was closed; and said that those were the  
13 only documents now available to Bankers Trust.

14 THE COURT: Mr. Duffy doesn't have to offer  
15 them just because he brought them.

16 MR. MARTIN: I understand. Just so the record  
17 is clear.

18 MR. DUFFY: Since we are describing what they  
19 are, they are bank statements for the period that Mr. Martin  
20 indicates, a power of attorney from Helen B. Dwyer to  
21 Louis Hall dated January 10, 1970; copies of signature cards,  
22 correspondence from the Putney firm and copies of documents  
23 from the estate closing out the account.

24 THE COURT: Unless it gets offered I won't have  
25 to worry about them.

1 eljp 3

2 MR. MARTIN: The other matter we had open,  
3 your Honor, I said there was at some point discussion  
4 about certain correspondence between Mr. Sanborn and Mr.  
5 Schmieder. I have pulled from that file the documents  
6 that I believe are relevant. Mr. Duffy suggests we just  
7 simply mark the entire file. I think most of the rest of  
8 the file is not relevant, but your Honor's preference on  
9 that is fine with me.

10 THE COURT: Just tell me what you think is  
11 relevant, and if you want to mark the rest, all right.

12 MR. MARTIN: Which I think are relevant, your  
13 Honor, are documents that have been marked in the Sanborn  
14 deposition as Sanborn Exhibit 6, which is a telegram to  
15 Mrs. Dwyer from Schmieder, a letter of November 13, '67,  
16 marked Special Guardian Exhibit 7, from Sanborn to Schmieder.  
17 8A and 8B, Special Guardian Exhibits which are a letter  
18 from Schmieder to Sanborn. And let me say, so that there  
19 is no misunderstanding on that, I offer that simply for  
20 the fact that the document was exchanged and not for the  
21 truth of it, indeed I object to it for its truth, since it  
22 contains Mr. Schmieder's self-serving declarations. And  
23 then Special Guardian Exhibit 9 in that proceeding was a  
24 letter, Sanborn to Mrs. Dwyer enclosing the letter he had  
25 written to Schmieder, and Special Guardian's Exhibit 10 was



1 eljp 4

2 a letter of December 23, '67 to Mr. Sanborn from Helen  
3 Dwyer referring to the correspondence that he had enclosed.  
4 So those are the ones that I think are relevant. They  
5 have all been marked 15B, and if you want to mark that as  
15B in evidence.

7 THE COURT: All right.

8 MR. DUFFY: We have no objection.

9 THE COURT: All right. So marked.

10 Now, do you want to call Mr. Hall?

11 MR. DUFFY: Yes, your Honor.

12 (Plaintiff's Exhibit 15B was received in evi-  
13 dence.)

14 L O U I S H. H A L L, J R., having been  
15 called as a witness, was duly sworn and testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. DUFFY:

19 THE COURT: Do you still use the name "Jr." in  
20 general?

21 THE WITNESS: I still do. I was with my  
22 father's firm for so many years.

23 THE COURT: I see.

24 Q Mr. Hall, can you tell us, please, what your  
25 occupation is?



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Hall-direct

2 A I am an attorney.

3 Q In what state are you admitted to practice?

4 A New York.

5 Q When were you admitted to practice in this state?

6 A 1934.

7 Q Upon your admission to practice did you have an  
8 association or any employment with the law firm?

9 A Yes, I did.

10 THE COURT: Where did you go to law school?

11 THE WITNESS: Columbia for one year and to  
12 Brooklyn for two.

13 THE COURT: I was wondering, because I was 1934  
14 also.

15 Q What was the name of that law firm, Mr. Hall?

16 A Putney, Twambley & Hall.

17 Q Was that your first employment with that firm?

18 A It was.

19 Q Had you worked for that law firm prior to 1934?

20 A Yes, I believe I had during the summer months.

21 Q When would that summer employment have commenced?

22 A 1934 and I believe 1933, in the summer.

23 Q Did you ever work--

24 A Possibly 1932. I don't really recall.

25 Q And you had no other employment with that law

1 eljp 6 Hall-direct

2 fi m prior to that time?

3 A Prior to what time?

4 Q Prior to 1932, was the earliest date you had  
5 testified?

6 A None.

7 Q Was Helen B. Dwyer an employee of that law firm  
8 at any time during that period?

9 A Yes, she was.

10 Q Do you know the date of the commencement of her  
11 employment with that law firm?

12 A I understand it was 1929.

13 Q And do you know for whom she worked?

14 A She worked for my father.

15 Q What was the nature of her employment for your  
16 father?

17 A She was his secretary.

18 Q Can you describe for us the types of duties that  
19 she would have performed for your father as his secretary?

20 A Yes. The usual duties of a legal secretary:  
21 Taking dictation, typing; she also kept records and books  
22 for him.

23 Q Do you know if she would prepare any income  
24 tax returns for him?

25 A At that time I don't know.



1 eljp 7

Hall-direct

2 Q Do you know whether she did prepare any income  
3 tax returns for him at any time?

4 A I do.

5 Q Would you describe the income tax returns that  
6 she prepared?

7 A Yes. They were both personal income tax re-  
8 turns and fiduciary income tax returns.

9 Q When you say personal income tax returns, do  
10 you mean your father's personal income tax returns?

11 A I don't know about his, but for clients.

12 Q Do you know approximately how many tax returns  
13 she would prepare for your father during the course of  
14 the year?

15 A No, I don't.

16 Q Do you know whether she prepared any of the  
17 Stoneleigh Corporation tax returns?

18 A I don't know. I don't remember.

19 Excuse me, I'm sure that she typed them.  
20 Whether she actually prepared them, did the computation,  
21 I don't know.

22 Q When you say you are sure that she typed them,  
23 what do you mean, you are sure?

24 A Well, I mean that I'm sure. I'm not saying  
25 that I saw her do it, but I'm sure that she did and nobody



1 eljp 8 Hall-direct

2 else did.

3 THE COURT: Actually, what most witnesses mean  
4 when they say they are sure, is you are not sure but you  
5 think it is so.

6 THE WITNESS: I stand corrected.

7 Q You don't dispute the fact that she prepared  
8 them?

9 A I would not dispute it.

10 THE COURT: On the basis of everything you know,  
11 you assume it must be so.

12 THE WITNESS: I assume it must be so, yes.

13 Q Did your father have any other secretaries  
14 working for him while Helen Dwyer was his personal secre-  
15 tary?

16 A No, except for emergency cases when she might  
17 be out.

18 THE COURT: Did you say when she came to work  
19 for your father?

20 THE WITNESS: I believe it was 1929.

21 Q Would there ever be an occasion when Helen  
22 Dwyer was not out, where some other secretary would pre-  
23 pare work for your father, if you know?

24 A It's possible, but I don't recall it.

25 Q Did you prepare for your testimony today, Mr.

1 eljp 9

Hall-direct

2 Hall?

3 A Yes, I certainly did.

4 Q In preparing for that testimony did you review  
5 any documents?

6 A Yes.

7 Q Would you please tell us the documents that  
8 you reviewed in preparation for this testimony?

9 A Well, for the last--

10 MR. MARTIN: I'm going to object. It's com-  
11 pletely irrelevant at this point.

12 THE COURT: No, I will allow it.

13 A I reread the transcript of my testimony in the  
14 probate case; I looked over the exhibits in that case; I  
15 looked over the interrogatories and the answers to the  
16 interrogatories in the probate case and in this case. That's  
17 about it.

18 THE COURT: As a matter of curiosity, are you  
19 a litigator?

20 THE WITNESS: No, I'm not.

21 Q When you say that is about it, is that it or  
22 could there be other documents?

23 A There could be others.

24 Q Would you press your recollection and tell me  
25 all the documents that you looked at?



1 eljp 10 Hall-direct

2 A (Pause.)

3 Q Would it be helpful if I gave you a pad?

4 A Not in the least.

5 THE COURT: He's mentioned all he can remember.

6 If you think there are any other relevant ones, ask him.

7 Q Did you look at any correspondence between your  
8 firm and the firm of J. Edward Burroughs?

9 A No.

10 Q Did you look at any correspondence between your  
11 firm and the firm of Alphonse B. Landa?

12 A Yes, I looked--no, not between my firm and  
13 Alphonse B. Landa.

14 Q Apparently you looked at some documents addressed  
15 to Mr. Landa; is that it?

16 A I did.

17 Q Which documents were those?

18 A They were copies of the letters which Helen  
19 Dwyer wrote to him describing the contents of her will,  
20 and his reply to her. These were photocopies of documents  
21 that are marked.

22 Q Did you look at any correspondence between  
23 William Graupner and Kurt Schmieder?

24 A No, sir.

25 THE COURT: This is in context with preparation



1 eljp 11

Hall-direct

2 for this testimony; is that right?

3 THE WITNESS: I didn't know I was going to even  
4 testify, but it was in context with preparation for the  
5 trial, for helping my attorneys or for answering questions  
6 I might be asked.

7 Q Did you look at any documents between--rather,  
8 any correspondence between Kurt Schmieder and Herman  
9 Graupner?

10 A Yes.

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1 rdsjp l Hall-direct

2 Q Do you have those documents with you?

3 A I don't, but I believe my attorneys do.

4 Q May we see those documents, please?

5 MR. MARTIN: My objection is, A, relevance;  
6 and B, this is correspondence between Mr. Graupner and  
7 Mr. Schmieder. These were all available for inspection at  
8 any time.

9 THE COURT: What do you want to see them for  
10 now? What is the purpose?

11 MR. DUFFY: I want to make certain that we are  
12 aware of all the documents that Mr. Hall has looked at in  
13 preparing for his testimony, your Honor. And we know that  
14 on a prior occasion there seemed to be some large gaps in  
15 that series of documents, and I would like to ascertain  
16 whether those gaps have been filled in or not.

17 MR. MARTIN: Your Honor, we had marked as an  
18 exhibit here, in preparing for this, a file containing  
19 various correspondence about which Mr. Duffy questioned  
20 him during the Surrogate's proceeding. That is the file  
21 that Mr. Hall looked at.

22 THE COURT: I take it you represent to me that  
23 you haven't shown Mr. Hall anything you concealed from Mr.  
24 Duffy?

25 MR. MARTIN: Yes. I would be happy at the end



1 rdsjp 2

Hall-direct

2 of the day to have him look through the file again.

3 THE COURT: It seems to me that is as much as  
4 you can get out of this witness.

5 MR. DUFFY: Fine, sir.

6 Q Mr. Hall, do you know whether your firm repre-  
7 sented Garfield Worsted Mills?

8 A I don't know that it did.

9 THE COURT: That would have been when, what  
10 year?

11 Q Well, in 1907 for instance?

12 A I wasn't born in 1907, Mr. Duffy. I don't  
13 know that it represented that firm.

14 Q Would the records of your firm show that?

15 A They would have in those days if it represented  
16 it.

17 Q When did you first become aware of the name  
18 Jenny Bochman?

19 A I think it was in 1936.

20 THE COURT: 1936?

21 THE WITNESS: I think so.

22 Q Under what circumstances did you become aware  
23 of that name?

24 A I believe it was when my father told me that  
25 we were going to form a corporation, a personal holding



1 rdsjp 3

Hall-direct

2 corporation, whose shares would be held by--

3 MR. MARTIN: Your Honor, I want to interpose  
4 an objection here, which I hope can be a standing one, and  
5 that is I object on the grounds of hearsay to all of these  
6 reported conversations that Mr. Duffy may ask about.

7 THE COURT: I will take it subject to that  
8 objection.

9 Q Continue, please.

10 A I think that's when I first heard of the name  
11 Jenny Bochman.

12 Q Now, you say your father asked you to form a  
13 corporation?

14 A He told me that we were going to and he asked  
15 me to take part in its formation. I had never taken part  
16 in the formation of a corporation before, and that was one  
17 of my assignments.

18 Q And did you in fact complete that assignment?

19 A Yes. I and others in the firm.

20 THE COURT: What did your father tell you about  
21 it as far as you can remember?

22 THE WITNESS: He said that we were going to  
23 form a corporation, a personal holding corporation and the  
24 stock was going to be issued to Jenny Bochman, and that he  
25 wanted me to learn how to form a coporation. I had never

1 rdsjp 4

Hall-direct

2 done it before, and that Bill Putney, one of my associates  
3 then, who had done some of this work before would help me  
4 out with it, and together we did it.

5 THE COURT: He was the son of the Putney of  
6 the firm?

7 THE WITNESS: He was a grandson.

8 Q Now, in addition to yourself, who else drafted  
9 any of the documents related to the incorporation of Stone-  
10 leigh?

11 A I don't recall, except Mr. Putney.

12 Q Do you know who typed those documents?

13 A No, I don't know.

14 Q To whom did you give them to be typed?

15 A I don't recall.

16 Q Do you know whether Helen Dwyer typed any of  
17 the documents relating to the incorporation, the Stoneleigh  
18 incorporation?

19 A I don't know.

20 THE COURT: Is it likely that she would have?

21 THE WITNESS: It is likely that she would have.

22 Q Was this work done for your father, the incorpora-  
23 tion of Stoneleigh?

24 A Was it done for my father?

25 Q It was done at the direction of your father?



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2 A Yes, sir.

3 Q Did you have a secretary at that time?

4 A I don't believe I did.

5 Q And how would you ordinarily get secretarial  
6 service if you required it?

7 A By asking for help.

8 Q And who would you ask?

9 A Probably ask my father or Mrs. Dwyer.

10 Q And if you asked your father, who would he have  
11 referred you to?

12 A I don't know.

13 THE COURT: I don't see that it makes much dif-  
14 ference. What are you trying to establish? Certainly  
15 there is no dispute that Mrs. Dwyer was a loyal servant  
16 of the firm, or however you want to describe it. What do  
17 you add to that by this?

18 MR. DUFFY: I'm going to show, your Honor, an  
19 involvement on Mrs. Dwyer's part at this phase; that she  
20 had an actual knowledge of the Stoneleigh Corporation and  
21 its principles by reason of her participation as a secre-  
22 tary in the incorporation process.

23 THE COURT: What does that get us to?

24 MR. DUFFY: I think that that will establish  
25 our basis--

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Hall-direct

2 THE COURT: I mean, it certainly seems obvious  
3 --maybe it isn't--that Mrs. Dwyer and everybody in the firm  
4 either knew or could have known that Mrs. Bochman was in  
5 possession of funds which related to Mr. Schmieder and  
6 Mr. Schmieder wanted to get rid of those funds one way or  
7 another. It seems to me it is conceded that everybody  
8 knew that.

9 MR. MARTIN: I wouldn't jump quite that far.  
10 I certainly concede, and I think it is obvious Mrs. Dwyer  
11 was Mr. Hall's secretary and I was not at all advised that  
12 she knew about the Stoneleigh Corporation and Mrs. Bochman.

13 What I do not concede at this point, your Honor,  
14 is that anybody at the time this gift was made knew that  
15 Kurt Schmieder was the alleged owner of this property. I  
16 think indeed this witness will testify that he never heard  
17 the name Kurt Schmieder at that time.

18 THE COURT: I don't see how this gets you there  
19 on the issue of what she might have known.

20 MR. MARTIN: I would simply object to it. Mr.  
21 Hall says he doesn't know. What perhaps was or what possibly  
22 was, I don't think adds anything.

23 THE COURT: I suppose I can draw inferences from  
24 what other people might have known from what they did.

25 MR. DUFFY: This witness testified he prepared



1 rdsjp 7

Hall-direct

2 drafts of these papers and somehow they got typed.

3 THE COURT: I am assuming that Mrs. Dwyer typed  
4 them. I don't see that that is too relevant, but go ahead.  
5 I am assuming she either typed them or knew they were being  
6 typed.

7 I gather whatever was going on with respect to  
8 your father's business she knew about?

9 THE WITNESS: I'm quite sure that would be  
10 true.

11 THE COURT: Again, that means you don't know.

12 THE WITNESS: I said if I knew I would be tell-  
13 ing the exact truth.

14 THE COURT: When a witness says he is sure, he  
15 is not sure.

16 (Laughter.)

17 Q Mr. Hall, can you identify the handwriting on  
18 Exhibit 7H?

19 A I would say that is Helen Dwyer's. Those are  
20 Mr. Tramotolo.

21 THE COURT: Who is he?

22 THE WITNESS: He was a clerk in our office and  
23 a notary.

24 Q I will direct your attention specifically to  
25 the handwriting on the top of the front page which says

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Hall-direct

2 "Stoneleigh Corporation, Market Street, Wilmington, Dela-  
3 ware."

4 Is that the handwriting you identified to be  
5 Helen Dwyer's?

6 A It is.

7 Q Mr. Hall, did there come a time when Stoneleigh  
8 Corporation was to be dissolved?

9 A Yes, there did.

10 Q Did anyone tell you the reasons for the dis-  
11 solution?

12 A I don't know if they told me of it, Mr. Duffy,  
13 but I knew about it.

14 THE COURT: Somebody must have told you if you  
15 knew.

16 THE WITNESS: Helen Dwyer became the owner of  
17 the shares of Stoneleigh Corporation and instructed that  
18 it be dissolved.

19 Q Now, weren't there other transactions leading  
20 up to the dissolution of Stoneleigh Corporation?

21 A Certainly.

22 Q And you were an officer of Stoneleigh Corpora-  
23 tion, were you not?

24 A Yes.

25 Q And you were one of its directors also, weren't



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2 you?

3 A Yes.

4 Q Now, did you know that Jenny Bochman desired  
5 to dispose of her shareholdings in Stoneleigh Corporation?

6 MR. MARTIN: I am going to object to the form  
7 of the question because I think one of the problems here  
8 is we talk about knowledge, we talk about the law, and  
9 there are questions of how he came about as to what he is  
10 going to testify to. This witness I know will testify  
11 that he had no personal dealings with Mrs. Bochman. Any-  
12 thing he tells us comes from what he heard somewhere. It  
13 is hearsay.

14 THE COURT: He may have heard it from his  
15 father. He was employed by his father and he knew or may  
16 have known--Mrs. Bochman was the owner of the shares; is  
17 that correct?

18 THE WITNESS: She was the record owner of the  
19 shares. She was in Switzerland.

20 THE COURT: When this corporation was incorpo-  
21 rated by you and Mr. Putney, or whomever, the purpose of  
22 the purpose of the incorporation was to incorporate a  
23 personal holding company of which she would be the sole  
24 stockholder?

25 THE WITNESS: Sole stockholder.

1 rdsjp 10

Hall-direct

2 THE COURT: Then there came a time when that  
3 corporation was to be dissolved?

4 THE WITNESS: Yes, but first there came a time  
5 when Jenny Bochman's shares were transferred to Ellen  
6 Dwyer and then the dissolution was to take place.

7 THE COURT: Did your father tell you anything  
8 about why the shares were being transferred from Jenny  
9 Bochman to Helen Dwyer?

10 THE WITNESS: Yes. He told me it was a gift  
11 from Jenny Bochman to Helen Dwyer and that Jenny Bochman's  
12 shares were to be turned in and shares replacing them to  
13 be issued to Helen Dwyer.

14 THE COURT: All right.

15 Q Now, Mr. Hall, as an officer and a director of  
16 the Stoneleigh Corporation did you make any independent  
17 investigation of the basis of the transfer of Jenny Boch-  
18 man's stock to Helen B. Dwyer?

19 A No, sir. This was a dummy corporation. It  
20 had no activity whatsoever except to hold the stock, the  
21 securities, and it was inactive.

22 Q Well, it did file tax returns regularly?

23 A Yes, sir.

24 Q Collected dividends regularly?

25 A I don't know whether it did or not.



1 rdsjp 11

Hall-direct

2 Q I think that is obvious from the financial  
3 records of the corporation that are in evidence.

4 A All right.

5 Q Do you know approximately what the value of  
6 the assets of Stoneleigh Corporation were at this time?

7 A At the time of the gift?

8 Q At the time we are talking about now.

9 A What time are we talking about?

10 Q We are talking about the time of the dissolu-  
11 tion of the corporation.

12 A Yes, I know what they were.

13 Q Approximately how much were they?

14 A I saw the gift tax return. It was \$33,000,  
15 more or less.

16 Q Now, did you have any knowledge or information  
17 as to the nature of Mrs. Bochman's ownership of these  
18 shares that she held in Stoneleigh Corporation?

19 A I don't know what you mean by the nature of her  
20 ownership. She was the holder of record, and as far as I  
21 know was the owner of the shares.

22 Q Was she the beneficial owner of the shares to  
23 your knowledge?

24 A Do I know?

25 THE COURT: What did you think at that time?

1 rdsjp 12 Hall-direct

2 THE WITNESS: I thought she was.

3 Q Now, did your father ever ask you to undertake  
4 any legal research with respect to making an absolute gift?

5 A No.

6 Q Of any of Stoneleigh's property?

7 A No.

8 Q Did anyone else in your firm ask you to under-  
9 take such research?

10 A No one asked me to.

11 Q Do you know whether anyone in your firm did  
12 undertake any such research?

13 A I do not know.

14 THE COURT: What is the nature of the research?

15 MR. DUFFY: With respect to an absolute gift of  
16 Stoneleigh Corporation's property.

17 THE COURT: How would there be research on that?  
18 On what aspect? If A wants to give B some property, why  
19 would that require research?

20 MR. DUFFY: There are several documents before  
21 the Court document now, your Honor, where Hall, Sr., said  
22 that he had investigated the problem and the only way to  
23 deal with the problem was to make an absolute gift of the  
24 property, with the suggestion to me that someone investigated  
25 it.



1 rdsjp 13

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2 THE COURT: Your question would not to me bring  
3 that information out. Maybe you ought to rephrase your  
4 question. You asked him was any legal research done about  
5 giving property from A to B, and I don't see that that needs  
6 research.

7 MR. DUFFY: I confined that to Stoneleigh's  
8 assets.

9 THE COURT: The question you are referring to  
10 is research about the effect of the alien property laws.  
11 I am just pointing out that your question doesn't seem to  
12 call for that information.

13 Q Mr. Hall, are you familiar that your father  
14 has made statements to the effect that the only way Jenny  
15 Bochman could suitably dispose of her interest in Stone-  
16 leigh Corporation was by means of an absolute gift?

17 MR. MARTIN: I object to the characterization,  
18 your Honor. His statements have been marked and received  
19 in evidence.

20 THE COURT: He wants to know if this witness  
21 ever knew about those. Overruled.

22 A I'm not sure what the question was about.

23 THE COURT: Show him the statements you have  
24 in mind and ask him what he knows about them.

25 Q Mr. Hall, I direct your attention to the second

1 rdsjp 14

Hall-direct

2 paragraph of page 2 of Plaintiff's Exhibit 2B. I ask you  
3 to read that, please.

4 THE COURT: To yourself.

5 Q To yourself.

6 A Well, the whole page?

7 Q Just the second paragraph.

8 A All right.

9 (Reading.)

10 THE COURT: This is what now?

11 MR. DUFFY: A memorandum offered in proceedings  
12 before the Alien Property Custodian to unblock Mrs. Dwyer's  
13 property which had been blocked by the Treasury Department.

14 THE COURT: You have read that paragraph?

15 THE WITNESS: I have read that paragraph.

16 THE COURT: Proceed.

17 Q Did you participate in the drafting of any of  
18 the documents referred to in the paragraph that you just  
19 read with respect to the dissolution of Stoneleigh Corpora-  
20 tion, the gift tax returns, and so on?

21 A I don't recall preparing any gift tax returns.  
22 I might have. I don't believe so. I don't recall doing  
23 the dissolution papers, simply because it is so long ago.  
24 I assume I did but I don't remember.

25 Q Mr. Hall, I direct your attention to the last



1 rdsjp 15

Hall-direct

2 several sentences on page 7 of Plaintiff's Exhibit 2A. Why  
3 don't you begin with this sentence here, if you would, that  
4 says, "I think." It is about seven lines up from the bottom.

5 A (Reading.)

6 I don't understand it out of context.

7 Q Read more if you need to.

8 A (Reading.)

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1 eljp 1

Hall-direct

2 Q Apparently Mrs. Bochman wanted to make--

3 THE COURT: What is that document you are read-  
4 ing?

5 MR. DUFFY: I'm sorry, your Honor. This is  
6 Plaintiff's Exhibit 2A, and the portion that I was pointing  
7 to or directing Mr. Hall's attention to was that portion  
8 that deals with the advice that Mr. Hall, Sr. gave to the  
9 effect that the only way you could dispose of the property  
10 would be by absolute gift.

11 THE COURT: Is this Mr. Hall's testimony before  
12 something?

13 MR. DUFFY: That is his testimony before Alien  
14 Property Custodian with respect to certain blocking proceed-  
15 ings.

16 MR. MARTIN: I object to that characterization  
17 of the statement. I think Mr. Hall says this is his state-  
18 ment whether there was any way that Mrs. Bochman could hold  
19 that property and at the same time conceal her ownership.  
20 It was to that he was responding. So I object to the  
21 characterization. The document speaks for itself.

22 THE COURT: Mrs. Bochman is not Mr. Schmieder's  
23 sister, but the sister of his wife.

24 MR. DUFFY: His sister-in-law.

25 THE COURT: All right.



1 eljp 2 Hall-direct

2 BY MR. DUFFY:

3 Q Mr. Hall, do you know how your father came to  
4 the conclusion that the only way she could dispose of that  
5 property would be by absolute gift?

6 MR. MARTIN: I object to the form of that ques-  
7 tion, your Honor.

8 THE COURT: You said do you know whether he came  
9 to that conclusion?

10 MR. DUFFY: I think I asked how does he know  
11 his father came to that conclusion.

12 THE COURT: In the first place, do you know  
13 whether he came to that conclusion?

14 THE WITNESS: I don't know whether he did or  
15 not, your Honor.

16 Q Mr. Hall, do you know who is responsible for  
17 selecting a donee of the property of Stoneleigh Corporation?

18 A No, I do not.

19 Q Did you ever talk to your father about that  
20 subject?

21 A Yes.

22 Q What did he tell you?

23 A He told me that he had received word through  
24 Mr. Graupner--

25 THE COURT: When was this?

1 eljp 3

Hall-direct

2 THE WITNESS: This was sometime around the time  
3 of the gift, probably at or after. That he received word  
4 from Mr. Graupner that Mrs. Bochman wanted to make a gift  
5 and my father asked who the donee was to be. And Mr.  
6 Graupner told him that Mrs. Bochman did not have any donee  
7 in mind but wanted Mr. Graupner, or Mr. Graupner and my  
8 father to locate one, find one.

9 THE COURT: This seemed kind of a surprise bit  
10 of information, didn't it?

11 THE WITNESS: I didn't question it at the time,  
12 but he told me sometime in that area that she had simply  
13 wanted, told Mr. Graupner that she wanted to dispose of  
14 the property, get rid of it. And she had intimated that she  
15 wanted to know whether she could have it held in a false  
16 name or concealed without its true ownership being revealed  
17 in this country. And his answer, he told her no, it could  
18 not be done. And then--I don't know whether it was at that  
19 time or later that the question came back what should she  
20 do, because she wants to dispose of it. And his answer was  
21 that the only thing he could think of was if she wanted to  
22 get rid of it that badly, she'd have to give it, because  
23 a cloaking operation would be illegal.

24 THE COURT: Did he tell you why she wanted to  
25 give it away or why he understood she wanted to give it



1 eljp 4 Hall-direct  
2 away?

3 THE WITNESS: No, he didn't.

4 Q Mr. Hall, did he explain to you why a cloaking  
5 operation would be illegal?

6 A I don't think he had to, Mr. Duffy I think  
7 it's known that if you conceal property and don't disclose  
8 it when the law requires you to, then it is illegal.

9 Q Which law are we talking about at this particular  
10 time?

11 A I don't know. I didn't cross examine my father  
12 on the subject.

13 Q Did you have any other discussions with your  
14 father at this time concerning this same subject?

15 A I don't even remember one discussion, Mr. Duffy,  
16 but I must have had one or more.

17 Q You say you don't know whose laws would make  
18 cloaking illegal at this particular point in time; is that  
19 correct?

20 A I don't know.

21 Q Were there any laws in effect in the United  
22 States at this particular point in time that would have  
23 made a cloaking illegal, that you are aware of?

24 MR. MARTIN: Your Honor, I object to this line  
25 of questioning. It seemed to me he asked him if he had

1 eljp 5

Hall-direct

2 any discussion with his father about it. He said what dis-  
3 cussion he had. He said he didn't cross examine his father  
4 about the legal advice he gave. I just think what Mr. Hall  
5 may think now about what law may be involved is just totally  
6 not relevant.

7 THE COURT: I suppose he is not bound by the  
8 witness' answers. You may proceed. Overruled.

9 MR. DUFFY: Would you repeat the prior question,  
10 please?

11 (Question read.)

12 A When you say this particular time, do you mean  
13 now or back?

14 Q At the time of this discussion.

15 A Well, I think the tax laws would have required  
16 disclosure of ownership, and the Trading With the Enemy  
17 Act would have required it with respect to enemy aliens.

18 Q Let me refresh your recollection. We are talk-  
19 ing about a conversation that occurred sometime late in  
20 1937 or early 1938. How would the Trading With the Enemy  
21 Act provisions have affected this transfer?

22 A It would have affected the transfer?

23 Q How would the provisions of the Trading With the  
24 Enemy Act come into play with any cloaking in 1937 or '38?

25 A It's obvious there were clouds of war over



1 eljp 6

Hall-direct

2 Europe at that time and war was imminent, and it even ally  
3 took place. And anything done in anticipation of this I  
4 think would be improper.

5 Q This is, of course, all conjecture?

6 A Of course it is. You asked me for conjecture.

7 MR. MARTIN: Your Honor, I now move to strike  
8 it all, because it is all conjecture.

9 THE COURT: I will allow it.

10 Q Do you know when Helen B. Dwyer became aware  
11 that she was going to be the recipient of Stoneleigh Cor-  
12 poration?

13 A I don't know when she became aware of it.

14 Q Did you have any discussions with your father  
15 concerning the selection of Helen B. Dwyer as a donee?

16 A I did not.

17 Q When did he tell you that she was to become the  
18 donee?

19 A I don't recall, but just a moment ago I told  
20 the Court my best recollection as to when my father told  
21 me about it.

22 Q Did you have any discussions with Helen B.  
23 Dwyer concerning becoming the donee of Stoneleigh Corpora-  
24 tion?

25 A I don't believe I did.

1 eljp 7

Hall-direct

2 Q Do you know who prepared the papers for the  
3 dissolution of Stoneleigh Corporation?

4 A I think I have testified I don't recall whether  
5 I did or not, the dissolution.

6 THE COURT: But you probably did it?

7 THE WITNESS: I probably did it. I don't know.

8 Q If I were to show you the papers, would that  
9 refresh your recollection?

10 A I don't know until I see them.

11 Q I direct your attention to page 7A and specific-  
12 ally to the certified copy of the certificate of dissolution  
13 therein.

14 A No, sir. I do not recall whether I prepared  
15 that or not.

16 Q Do you know who may have typed that document?  
17 Do you know who typed it?

18 A I know who may have.

19 Q Do you know who may have typed it?

20 A I don't know who typed it.

21 THE COURT: Is it probable that Mrs. Dwyer  
22 typed it?

23 THE WITNESS: I can't tell, your Honor. It's  
24 1938. I don't know whose typing it is.

25 Q Do you recall being present at the meeting of



351a

1 eljp 8

Hall-direct

2 the board of directors of Stoneleigh Corporation where  
3 dissolution was voted?

4 A No, I do not.

5 THE COURT: In those days there probably was  
6 no such meeting. My recollection of corporate practice in  
7 those days.

8 THE WITNESS: I would have some memory if I  
9 did remember it.

10 Q I direct your attention to minutes of the meet-  
11 ing held on March 30, 1938 which are part of Exhibit 7A and  
12 ask you if that refreshes your recollection.

13 A No, it doesn't refresh my memory because I  
14 really have no recollection of this meeting.

15 Q Perhaps if you would consider for the moment  
16 that this was certainly not a usual event; here was a secre-  
17 tary in a law office receiving a rather sizeable sum of  
18 property, something that doesn't occur all that frequently.  
19 There is nothing in those minutes that jogs your recollection  
20 of what might have occurred at that meeting?

21 A Absolutely nothing, Mr. Duffy. I don't remember  
22 the meeting.

23 THE COURT: I must say that my recollection of  
24 corporate practice in those days, which happily is different  
25 now, I would have bet my bottom dollar there was no meeting.

1 eljp9

Hall-direct

2 Somebody drew up the minutes and signed them.

3 MR. DUFFY: That may be, your Honor. Except  
4 the minutes purport that there was a meeting and that Mr.  
5 Hall was present and that Mrs. Dwyer was present, and cer-  
6 tainly may have heard before that this was a windfall to  
7 Mrs. Dwyer.

8 THE COURT: I'm just saying, in those days the  
9 recitation of the corporate meeting was held, in one of  
10 these private corporations, is not even prima facie suggest-  
11 ion that there was in fact such a meeting.

12 Q Mr. Hall, did you have any discussions with  
13 Helen Dwyer at or about the time of the dissolution of  
14 Stoneleigh Corporation wherein you discussed this windfall  
15 with her?

16 A No, Mr. Duffy, as far as I recall I did not.

17 THE COURT: Could I just interrupt on an entirely  
18 different matter, in the interest of my continued education  
19 in this case.

20 What would have been the purpose of Mrs. Dwyer's  
21 contesting the blocking of her funds if she didn't think she  
22 had any beneficial interest in this? Why wouldn't she just  
23 as well leave them back and in the due course of time they  
24 would have been unblocked and she could have turned them  
25 back?



1 eljp 10

Hall-direct

B2 2 MR. DUFFY: I would presume, your Honor, that  
3 this was a fairly large sum of money and the transactions  
4 pursuant to which Mrs. Dwyer received it were I would think  
5 carefully engineered so that she might be able to keep it.  
6 As it actually occurred, she was successful in being able  
7 to keep some of it. I think that would be sufficient en-  
8 ticement alone to try to get the money.

9 THE COURT: All right.

10 MR. DUFFY: Of course, in our theory of the  
11 case she was aided throughout this period by a law firm  
12 and attorneys who we felt viewed Mrs. Dwyer as being their  
13 nominee.

14 Q Mr. Hall, during this period that we have been  
15 discussing, the period from 1936 or approximately 1936 when  
16 you formed Stoneleigh Corporation to March of 1938 when  
17 Stoneleigh Corporation was dissolved and its assets were  
18 transferred to Helen B. Dwyer, do you happen to know whether  
19 your father held Mrs. Dwyer's power of attorney during that  
20 period?

21 A I don't happen to know.

22 Q Do you happen to know whether your father pre-  
23 pared any wills for Mrs. Dwyer during this period?

24 A I don't know.

25 Q Do you happen to know whether your father gave

1 eljp 11 Hall-direct

2 Mrs. Dwyer any financial advice during that period?

3 A I don't know that.

4 Q Do you know whether your father served as Mrs.  
5 Dwyer's attorney in any respects during that period?

6 A I don't know it.

7 THE COURT: It would be highly unlikely if he  
8 didn't do any legal work.

9 THE WITNESS: I don't know if he had any legal  
10 work. If so, I don't know.

11 Q Did you ever have discussions with Mrs. Dwyer  
12 at or about the time that she received the assets of Stone-  
13 leigh Corporation as to what she was going to do with those  
14 assets?

15 A No, I did not, I'm sure.

16 Q Do you know whether she had any discussions of  
17 that type with your father at or about the same time?

18 A I don't know whether she did or not.

19 Q Do you know whether there came a time that your  
20 father took a power of attorney from Mrs. Dwyer?

21 A I don't know whether he did or not.

22 Q Haven't you previously testified, Mr. Hall,  
23 that you believe that your father held Helen Dwyer's power  
24 of attorney?

25 A Perhaps I believe it, but you just asked me



1 eljp 12 Hall-direct  
2 whether I knew it.

3 Q What was the basis for your belief that your  
4 father held Helen B. Dwyer's power of attorney?

5 A I don't even recall.

6 Q But that is your belief?

7 A I don't know that it is my belief now. It  
8 may have been when I testified, but I can't remember whether  
9 she did or didn't. I really don't know. I won't deny it,  
10 but I don't know whether it's true.

11 Q Do you know whether your father prepared any  
12 wills for Helen B. Dwyer subsequent to her receiving the  
13 Stoneleigh assets?

14 A I believe so.

15 Q What is the basis for your belief that he did?

16 A Because I have seen a letter from Mrs. Dwyer  
17 to Mr. Landa, and I think that indicated that my father  
18 had prepared a will for her. That was one of the documents  
19 I was reading over in preparation for this trial.

20 Q Is that the only basis for your belief that that  
21 is what Mrs. Dwyer did with respect to her wills?

22 A Yes.

23 Q Mr. Hall, I show you Plaintiff's Exhibit 9C.  
24 Is that the letter to which you were referring a moment  
25 ago?

1 eljp 13

Hall-direct

2 A I don't believe it is.

3 Q Perhaps you could ask your attorneys to supply  
4 us with the letter to which you referred a moment ago.

5 A If they can, I'd be delighted to see it.

6 Q You said you reviewed it in connection with  
7 your testimony, so obviously it must have been recently.

8 A I don't see any reference in this letter as to  
9 his drafting wills for her.

10 Q Mr. Hall, you made a similar statement in an  
11 affidavit that you filed in the Surrogate's Court, do you  
12 recall making a statement to that effect under oath, that  
13 your father before you prepared wills for Mrs. Helen B.  
14 Dwyer?

15 A Yes, I did by Putnam affidavit say that, yes.

16 Q What was the basis for your statement?

17 A Well, I can't think of any lawyer who would  
18 have drawn her wills for her, and I assume I did.

19 Q But your statement in the affidavit was clear  
20 and direct; it indicated no assumption. It was a bald state-  
21 ment of fact.

22 A I'm sure it was.

23 Q And you as an attorney, I'm sure, a careful  
24 person, wouldn't you have couched that as being upon informa-  
25 tion and belief?



1 eljp 14

Hall-direct

2 MR. MARTIN: I'm going to object to this. It  
3 seems totally irrelevant at this point.

4 THE COURT: That is kind of argumentative, but  
5 I will allow it.

6 A I think the affidavit is true.

7 MR. DUFFY: I would like to inquire of Mr.  
8 Martin whether he has the letter to which Mr. Hall has  
9 recently referred, in which this indicates--

10 MR. MARTIN: I can show Mr. Hall a file of letters  
11 which has been marked as a J series and see if that is what  
12 he is referring to.

13 (Pause.)

14 A I think I must be mistaken because I don't see  
15 a reference in any of these to my father's preparation of  
16 her wills. I was under the impression that I had read it  
17 and that it was in this series of correspondence with Mr.  
18 Landa. Perhaps I didn't read them as carefully as I should  
19 have, Mr. Duffy.

20 Q At page 3 of your Putnam affidavit, you state  
21 as follows at paragraph 6: My father had drafted various  
22 wills for the decedent during his lifetime, and you just  
23 read Plaintiff's Exhibit 9C.

24 Would the wills that she is referring to in  
25 that exhibit be the wills that your father drafted for Mrs.

1 eljp 15

Hall-direct

2 Dwyer?

3 A I'm sorry, I don't know what 9C is.

4 Q You just read it.

5 A Is that the one that Mr. Martin handed to me?

6 Q No, that was the document I handed, which you  
7 just read.

8 A I still don't know what it is.

9 Q I show you a copy of it, Mr. Hall. This is a  
10 copy of the document which you just read a minute ago.

11 (Pause.)

12 A What is the question?

13 (Question read.)

14 A I assume that some or all of them were.

15 Q What is the basis for your assumption, Mr.

16 Hall?

17 A The basis for my assumption is that I don't  
18 think Helen Dwyer would have gone to any other attorney  
19 than my father for preparation of a will.

20 THE COURT: Whatever will was found on Mrs.

21 Dwyer, you assume your father drafted?

22 THE WITNESS: That's correct.

23 THE COURT: In his lifetime.

24 THE WITNESS: In his lifetime. It's an assump-  
25 tion. I think it's true.



1 eljp 16

Hall-direct

2 Q Did your father ever discuss with you the  
3 terms of Helen Dwyer's wills?

4 A No.

5 Q Do you know the terms of any of the wills that  
6 your father prepared for Helen Dwyer?

7 A No, sir, except as they are disclosed in her  
8 correspondence with Mr. Landa.

9 Q Mrs. Dwyer refers here to a son and a daughter  
10 of Mr. Hall. I presume the reference here to Mr. Hall is  
11 a reference to your father?

12 A You may presume that.

13 Q I presume that the reference here to a son of  
14 Mr. Hall would be you; is that correct?

15 A I hope I was his only son.

16 Q In 1948 did you have any sons?

17 A Yes, indeed. I had three--or four.

18 Q Would you reread the bottom portion of the  
19 third paragraph of that letter and see if you can identify  
20 those references for us?

21 (Pause.)

22 A I don't know what you mean by identify the  
23 reference. I was my father's only son. He had two  
24 daughters at this time.

25 Q Is her reference there to Mr. Hall a reference

1 eljp 17 Hall-direct

2 to you or your father, if you know?

3 A She wrote the letter, I didn't, Mr. Duffy. I  
4 assume it's me. But you know as well as I do what she  
5 meant.

6 THE COURT: You assume the reference there is  
7 to you?

8 THE WITNESS: I assume the reference to the son  
9 is myself. She mentioned son.

10 Q And the son and the daughter of Mr. Hall. Do  
11 you know to which of your father's two daughters that refer-  
12 ence "daughter" refers?

13 A No, I don't.

14 Q Mr. Hall, did there come a time after Mrs.  
15 Dwyer's receipt of this property upon the dissolution of  
16 Stoneleigh Corporation that you approached her for a loan?

17 A I'm not sure that I approached her for a loan.  
18 I did borrow money from her.

19 Q Do you recall the approximate date of that  
20 transaction?

21 A I think it was 1941 or '42.

22 Q What was the purpose of the loan?

23 A The purpose was to finance my purchase of  
24 some property and construction of a house.

25 Q Did you borrow one lump sum of money at one time



1 eljp 18 Hall-direct

2 or did you borrow various sums from time to time?

3 A I think there were at least two installments.  
4 I really don't remember. It's in the record. I can't re-  
5 member whether it was all in one or in installments.

6 Q Do you recall whether you paid interest on the  
7 loan or not?

8 A Yes, I did.

9 Q Do you know the rate of interest?

10 A I think it was 4 per cent. I'm not sure.

11 Q Did you approach anyone else with respect to  
12 borrowing these funds prior to your approaching Mrs.  
13 Dwyer?

14 A I don't think I approached Mrs. Dwyer, Mr.  
15 Duffy.

16 THE COURT: How did Mrs. Dwyer come to lend  
17 you the money?

18 THE WITNESS: I had been living in an apart-  
19 ment in Fleetwood with my wife and oldest child at the  
20 time. We were looking for a house in the suburbs. My  
21 family lived in New Canaan. We wanted to live out in that  
22 general direction, and we looked in the Hartsdale, Scars-  
23 dale area. We looked in Old Greenwich, that area, and  
24 couldn't find anything that we really wanted.

25 My father knew about this all the time, Helen

1 eljp 19'

Hall-direct

2 Dwyer knew about it. Eventually, my father had a friend  
3 who owned property and was developing houses in Stamford  
4 and he suggested that we talk with that person about find-  
5 ing a spot for us to build, because we hadn't found what  
6 we wanted to buy. And this called for a substantial out-  
7 lay of money, which I didn't have. And I don't remember  
8 whether I spoke to him, whether he just knowing that I would  
9 need financing spoke to me, whether Helen Dwyer herself  
10 suggested a loan--I really don't recall.

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1 rdsjp 1

Hall-direct

2 THE COURT: How much was involved in the loan?

3 THE WITNESS: \$14,500.

4 Q Mr. Hall, do you recall that in about December of  
5 1970 I asked you a similar question in an examination before  
6 trial

7 A I don't recall it, Mr. Duffy.

8 Q Mr. Hall, I asked you at that time if you ap-  
9 proached your father as to whether he would make this loan  
10 to you.

11 Specifically I said, "Did you ask your father"--

12 MR. MARTIN: A page reference, please.

13 MR. DUFFY: Page 24, no line, the first question.

14 "Q Did you ask your father to advance these  
15 funds to you?

16 "A No, I didn't."

17 A I'm sorry, I couldn't hear your statement.

18 Q The question asked was, "Did you ask your father  
19 to advance these funds to you?"

20 Your answer was, "No, I didn't."

21 A Are you stating that?

22 MR. MARTIN: There are several other questions  
23 and answers. If we are going to have that type of confronta-  
24 tion they should be read to complete the record.

25 It follows:

1 rdsjp 2

Hall-direct

2 "Q Did you ask any bank to advance these funds  
3 to you?

4 "A No.

5 "Q Did you ask anyone else to advance these  
6 funds to you?

7 "A No, I discussed my proposed financing with  
8 my father but I didn't ask him for any loan."

9 Q Well, did you ask anyone else to loan you this  
10 money?

11 A I didn't have to because she offered to that was  
12 as far as I had to go. Why should I ask anyone else?

13 THE COURT: You know, lawyers make terrible wit-  
14 nesses. Just answer the question.

15 THE WITNESS: I'm sorry.

16 Q Mr. Hall, at the time in question could you esti-  
17 mate for us your approximate net worth?

18 A No.

19 Q Do you know how much money you were making at the  
20 time?

21 A No. Not very much. But I don't know how much.

22 THE COURT: Not enough to finance this house?

23 THE WITNESS: That's correct.

24 THE COURT: You have already said that.

25 Q What was the nature and extent of your assets



1 rdsjp 3 Hall-direct  
2 at the time of this loan, if you recall?

3 A I don't recall, sir.

4 THE COURT: He has testified he wasn't earning  
5 enough to finance this house, so it seems to me you can pre-  
6 sume that the purpose of the loan was partly friendship.  
7 Isn't that a fair assumption?

8 THE WITNESS: Yes, sir.

9 THE COURT: Or non-commercial in any event.  
10 I think you have that point established.

11 Q Mr. Hall, did there come a time when your father  
12 died and Helen Dwyer approached you to draft a will?

13 A Yes.

14 Q When approximately was that?

15 A It was, I think, in 1955.

16 Q Now, do you recall the provisions of that 1955  
17 will that you drafted?

18 A Not very clearly.

19 Q Do you remember who was or who were the residuary  
20 beneficiaries of that will?

21 A I think that my younger sister and I were.

22 Q Your younger sister being whom?

23 A Mrs. MacIntosh.

24 Q What is her full name, please?

25 A Adelaide.

1 rdsjp 4 Hall-direct

2 Q Adelaide Hall MacIntosh?

3 A Yes.

4 Q Do you have another sister?

5 A I do.

6 Q What is her name?

7 A Virginia Hall Webb.

8 Q Did you have any discussions with Mrs. Dwyer con-  
9 cerning the provisions of that will?

10 A Yes.

11 Q And what did she tell you?

12 A I don't recall.

13 Q Now, did there come a time when Mrs. Dwyer asked  
14 you to revise her will?

15 A That was a revision of her will.

16 Q Did there come a time subsequent to that that she  
17 asked you to revise her will?

18 A Yes.

19 Q When was that?

20 A I believe it was in 1963.

21 Q Do you recall the provisions, the residuary pro-  
22 visions of that will?

23 A I'm not sure of them.

24 Q Would it refresh your recollection if I told you  
25 that you and your two sisters were the residuary beneficiaries



1 rdsjp 5 Hall-direct  
2 of that will?

3 A It would not refresh my recollection. I know  
4 that that happened in either that one or a subsequent  
5 will, but I don't know if it was true in '63.

6 THE COURT: You speak of residuary beneficiaries.  
7 Who were the other beneficiaries?

8 MR. DUFFY: The primary beneficiaries would be  
9 the residuary beneficiaries.

10 My recollection of the will is it provided a  
11 nominal bequest to certain relatives, a bequest to Amhurst  
12 College, and the balance of the estate being divided between  
13 one or more of Mr. Hall's sisters.

14 My recollection is that in the 1955 will one-half  
15 of the residuary went to Mr. Hall's younger sister in trust  
16 and the other half went to Mr. Hall outright.

17 My recollection is that the 1963 will continued  
18 the trust provision for Adelaide Hall MacIntosh for one-third  
19 of the residuary and then one-third of the residuary out-  
20 right to each of Mr. Hall and his older sister.

21 The 1966 will, which we will speak about in a  
22 minute, contains somewhat similar provisions.

23 Q Mr. Hall, do you recall a time subsequent to  
24 1963 when Mrs. Dwyer again asked you to assist her in again  
25 revising her will?

1 rdsjp 6

Hall-direct

2 A Yes.

3 Q Do you recall any discussions that you had with  
4 her concerning her wishes?

5 A At this moment I don't recall. If I saw the will  
6 I might remember what they were, if I saw the draft from which  
7 it was made.

8 Q But you have no independent recollection?

9 A At this moment I don't.

10 Q And how would that draft help your recollection?

11 A Because it would have my handwriting or her hand-  
12 writing or both on it.

13 Q I take it that was not one of the documents that  
14 you reviewed in preparation for your testimony today?

15 A I think you are right.

16 Q Now, did there come a time between 1955 and 1963  
17 when your sister Virginia experienced or began to exper-  
18 ience financial difficulties?

19 A Between '55 and '63?

20 THE COURT: '65 he said.

21 MR. DUFFY: '55 and '63.

22 THE COURT: '55 and '63.

23 A I can't recall when she began to.

24 Q Let me refresh your recollection. Is it not  
25 correct that her husband was a fairly successful cartoonist



1 rdsjp 7

Hall-direct

2 for a magazine?

3 A He was.

4 Q And did something happen to Mrs. Webb's husband?

5 A No. He's fine.

6 THE COURT: He is what?

7 THE WITNESS: He is fine.

8 Q Didn't his business begin to deteriorate?

9 A Yes. At what time is what I don't recall, Mr.  
10 Duffy.

11 Q Now, was it before or after you prepared the 1963  
12 will?

13 A I do not remember. I think it is in the tran-  
14 script of the probate.

15 Q Would it refresh your recollection if I told  
16 you that you testified it occurred prior to 1965?

17 A If that's what I testified, then I think that is  
18 probably right.

19 THE COURT: When was this testimony?

20 MR. DUFFY: 1970.

21 THE WITNESS: Four years ago, five years ago.

22 Q Now, does it refresh your recollection if I tell  
23 you the 1965 will contained a trust provision for your  
24 younger sister but the 1966 will did not?

25 A I believe it did.

1 rdsjp 8

Hall-direct

2 Q Do you recall having any discussions with Mrs.  
3 Dwyer as to the reasons why she preferred a trust for the  
4 1963 will?

5 A I don't remember whether it was the '63 will or  
6 some other, but I do remember some discussions with her as  
7 to why she would prefer a trust for my younger sister.

8 THE COURT: What were her reasons?

9 THE WITNESS: Her reasons were that my younger  
10 sister's husband was a boat builder--

11 THE COURT: This is not the cartoonist?

12 THE WITNESS: No, sir. They were up in Dover,  
13 New Hampshire, and he was just not making a good living at  
14 building boats. They were custom built, made to order  
15 yachts mostly, and fishing boats, and he was constantly  
16 running into debt and Helen Dwyer preferred to see my sis-  
17 ter's share of her estate go into trust so that it would  
18 not be available for his creditors or their creditors be-  
19 cause she undoubtedly would have turned over anything--my  
20 sister would have turned over anything that her husband  
21 needed to keep him going.

22 THE COURT: Did you have any discussion with Mrs.  
23 Dwyer as to why she was making you and your family the bene-  
24 ficiaries instead of her own family?

25 THE WITNESS: She had no family.



1 rdsjp 9 Hall-direct

2 THE COURT: She had family who were able to bring  
3 lawsuits later on; right?

4 THE WITNESS: They were cousins, nieces and  
5 nephews whom she almost never saw.

6 THE COURT: You discussed that?

7 THE WITNESS: I didn't discuss it as I recall,  
8 your Honor. She volunteered that she was very fond of the  
9 Hall family and had been ever since her first connection  
10 with the firm.

11 She did speak of the only relatives she ever men-  
12 tioned which were her counsin, with whom she was brought up  
13 by her cousin's parents. Her name was Stella and they called  
14 her Babe for short. Then her two children. They were the  
15 only ones she ever mentioned to me that I can recall.

16 THE COURT: Did she leave them anything in this  
17 will?

18 THE WITNESS: She left them small legacies.

19 Q Mr. Hall, during the period following your father's  
20 death, did you ever have occasion to take a power of attor-  
21 ney from Helen Dwyer?

22 A She gave me, as I recall it, a general power of  
23 attorney. Just when I don't recall. In fact, I think she  
24 gave me a second one later on. I always had a bank power  
25 of attorney on one of her checking accounts.

1 rdsjp 10 Hall-direct

2 Q Do you recall which checking account that might  
3 have been?

4 A No, I don't. It may have been more than one bank  
5 at different times. If she changed her account she probably  
6 would have given me whatever new bank she changed it to.

7 THE COURT: You brought earlier you were not a  
8 litigator. What is your specialty?

9 THE WITNESS: I don't have any specialty. It is  
10 mostly corporate and commercial law.

11 Q Mr. Hall, I show you a power of attorney from  
12 Bankers Trust Company and some signature cards from Bankers  
13 Trust Company. Would that be one of the powers of attorney  
14 that you referred to earlier?

15 A Of course.

16 (Plaintiff's Exhibits 28 and 29 are marked for  
17 identification.)

18 MR. MARTIN: My only objection is on relevance,  
19 your Honor.

20 THE COURT: You are offering it to show the close  
21 relationship between Mrs. Dwyer and the witness?

22 MR. DUFFY: That is correct, your Honor.

23 THE COURT: I will allow it for that purpose.

24 (Plaintiff's Exhibits 28 and 29 are received in  
25 evidence.)



1 rdsjp 11

Hall-direct

2 Q Mr. Hall, did you ever state that you gave Helen  
3 Dwyer financial advice?

4 A Not with respect to what she should do with her  
5 money, if that's what you mean by "financial advice."

6 THE COURT: What do you mean by "financial advice"?

7 THE WITNESS: I don't really know. I know what  
8 his question is aimed at. If it has to do with taxes which  
9 she might have involved in her estate. For instance, when  
10 she set up the trust in Boston, whether Massachusetts  
11 taxes would be different from New York ones. That I con-  
12 sidered financial advice.

13 THE COURT: You gave her that advice?

14 THE WITNESS: If she asked for it I gave it to  
15 her, yes.

16 Q Did you ever have the authorization to authorize  
17 transactions in any of Mrs. Dwyer's brokerage accounts?

18 A I think she did authorize me when she was going  
19 on trips to give instructions to her brokers. She usually  
20 left the instructions with me before she left.

21 Q Approximately during what periods did you have  
22 this ability?

23 A Somewhere after 1950, I would say, and before her  
24 death.

25 THE COURT: When did she die?

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rdsjp 12

Hall-direct

THE WITNESS: 1970.

MR. DUFFY: Late May of 1970, your Honor.

Q Mr. Hall, did there come a time when Mrs. Dwyer asked you to assist her in preparing a trust?

A Yes.

Q When would that have been?

A That, as I recall, was in 1968.

Q Approximately what time in 1968?

A In the summer.

THE COURT: In what?

THE WITNESS: Summer. I think it was July. I'm not sure of the month.

Q And did she tell you who were to be the remaindermen of that trust?

A Yes, she did.

Q And who did she tell you the remaindermen were to be?

A She asked they be the same as the remaindermen in her will; namely, my two sisters and I.

Q And did you engage the services of anyone to help you prepare that trust?

A I didn't engage the services of anyone. I talked to her broker, whom she suggested as a logical trustee. He was a man up in Boston, who in turn--and I



1 rdsjp 13

Hall-direct

2 asked him, I believe, if he had any attorneys whom he used  
3 for the handling of trusts. He referred me to Mr. Whipple.

4 I asked Mrs. Dwyer if Mr. Whipple, on Mr.  
5 Webber's recommendation, would be satisfactory to her. I  
6 checked Mr. Whipple in the directory, Martindale-Hubbell  
7 Directory, and he seemed satisfactory to me and he did to  
8 her.

9 So I called him, I believe, to ask him if he would  
10 prepare the trust that Mrs. Dwyer had in mind.

11 Q Do you know from whom the instructions as to the  
12 dispositive provisions of the trust came?

13 A Repeat that.

14 Q Did the instructions as to the dispositive pro-  
15 visions of the trust come from you or Mrs. Dwyer?

16 A They came from Mrs. Dwyer.

17 Q Let me ask the question a little differently then.  
18 Did you give Mr. Whipple the instructions as to the dis-  
19 positive provisions of the trust or did Mrs. Dwyer?

20 A I gave Mr. Whipple Mrs. Dwyer's instructions.  
21 I was the contact, if that is your question. That is  
22 known already.

23 Q Prior to Mrs. Dwyer speaking to you in the  
24 summer of 1968, did you have any discussion with Mrs.  
25 Dwyer concerning the plaintiff in this action?

1 rdsjp 14 Hall-direct

2 A Oh, I must have, down through the years.

3 Q Did you have any discussions with Mrs. Dwyer  
4 about October of 1967 concerning the plaintiff?

5 A I don't remember.

6 Q Did you have any discussions with Mrs. Dwyer  
7 at about that time concerning any telegrams that the plain-  
8 tiff may have sent Mrs. Dwyer?

9 A If that was the time that the plaintiff sent a  
10 telegram to Mrs. Dwyer, then I had a discussion with her  
11 at that time about the plaintiff.

12 Q What was the nature of that discussion?

13 A I really don't know what you mean.

B3 14 THE COURT: What did you say and what did she  
15 say?

16 THE WITNESS: All I recall is that she told me  
17 that she had a telegram and we read it over. I don't now  
18 recall what it said, but it was an indication to me that  
19 Mr. Schmieder was getting ready for litigation, that he was  
20 making a real claim. But I can't remember. I would like  
21 to see the telegram.

22 Q Was your impression at the time that Mr. Schmieder  
23 was preparing to litigate a claim with Mrs. Dwyer?

24 A I'm not sure whether it was then or later.

25 Q When you say later, was it at any time subse-



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1 rdsjp 15 Hall-direct  
2 quent to the discussions that Mrs. Dwyer had with you in  
3 1968 concerning the formation of this trust?

4 A It had no connection with the trust.

5 THE COURT: Why don't you show him the telegram?  
6 Is this the first telegram she received from you?

7 (Pause.)

8 MR. DUFFY: Mr. Martin is in custody of that docu-  
9 ment and he is looking for it.

10 MR. MARTIN: Unless the Clerk has it. It is in  
11 a folder of exhibits marked 15B, which is right there (indi-  
12 cating).

13 Q Mr. Hall, I show you a telegram, and I'm looking  
14 for a date on it. It is marked Sanborn Special Exhibit 6  
15 in another proceeding. It is one of the papers that com-  
16 prise Plaintiff's Exhibit 15B.

17 I ask you if that is the telegram that you were  
18 discussing before.

19 A I believe this is the one.

20 THE COURT: May I see it?

21 THE WITNESS: Yes.

22 (Handing.)

23 THE COURT: Now, your mind having been refreshed,  
24 do you remember the discussion?

25 THE WITNESS: I think that this was when I

1 rdsjp 16

Hall-direct

2 suggested that we ask Mr. Sanborn, who is no longer with our  
3 firm. He had been a partner in years gone past and had  
4 left the firm and had gone over to Germany on the Inter-  
5 national Court of Restitution, or whatever it was. He was  
6 back in this country living in Brooklyn and was already  
7 familiar with part of the background of Helen Dwyer's case,  
8 with the APC. I suggested that we get in touch with him to  
9 see if he would intervene in handling the reply to Mr.  
10 Schmieder because I didn't want to get personally involved.

11 THE COURT: Why didn't you want to get personally  
12 involved?

13 THE WITNESS: Because I knew I was a beneficiary  
14 of the estate and I didn't want to be handling her litigation  
15 when I was that closely involved.

16 Q Mr. Hall, this telegram says, "Intend to be in  
17 New York between 20 and 30 November. Please cable whether  
18 you will be available. Answer as paid. Kurt Schmieder."

19 Can you explain how this indicates that Mr.  
20 Schmieder was about to assert a claim?

21 A I don't think that that does. I think it was a  
22 later time I got that impression.

23 Q Approximately when did you get this impression?

24 A I don't know, but I'm sure it was after that  
25 time.



1 rdsjp 17

Hall-direct

2 Q What happened that gave you this impression?  
3 What event occurred that led you to this impression?

4 A I believe it was when Helen Dwyer showed me  
5 letters from corporations--copies of letters from corpora-  
6 tions to a bank refusing to divulge to that bank Helen  
7 Dwyer's address.

8 Q Now, do you have any of those letters in your  
9 custody or under your control?

10 A I do not.

11 Q Under your control?

12 A Not as far as I know.

13 Q You are executor of her estate?

14 A Thank you.

15 Q You retain her records. Do any of her records  
16 contain that correspondence?

17 A I don't know, but I've turned over all the records  
18 that were prior to her death to my attorneys.

19 Q Well, that would be under your control then,  
20 wouldn't it?

21 A Yes, it would be under my control.

22 Q I would appreciate it if you would ask your attor-  
23 neys to provide you with some of these letters that you re-  
24 fer to.

25

THE WITNESS: Attorneys, if you have them there

1 rdsjp 18 Hall-direct  
2 will you please furnish them.

3 MR. MARTIN: There are some letters in the San-  
4 born exhibit that Mr. Duffy is familiar with. At least one  
5 does make some reference, I think.

6 There is a letter here from Helen Dwyer dated  
7 September 28, 1967, in which she says, and that's in folder  
8 15 which has just been received. She is apparently respond-  
9 ing to some banks at that time.

10 THE COURT: Now, what is the question?

11 Q Mr. Hall, isn't the date of that letter prior to  
12 the date of the telegram that we have been just discussing?

13 A I'm not sure about the date of the telegram but  
14 it is later than some date that was stamped on that paper.  
15 This is September 28, 1967.

16 Q Yes, the telegram is October 19, 1967.

17 THE COURT: Now, did you discuss that letter with  
18 Mrs. Dwyer before she sent it?

19 THE WITNESS: I think I did, your Honor.

20 THE COURT: What was Mrs. Dwyer's interest keep-  
21 ing her address secret?

22 THE WITNESS: She didn't want to be pestered by  
23 Mr. Schmieder.

24 Anna Lisa Hunkins was another one who tried to  
25 get in touch with her.



1 rdsjp 19

Hall-direct

2 THE COURT: Who?

3 THE WITNESS: Anna Lisa Hunkins.

4 THE COURT: Who is she?

5 THE WITNESS: Someone who purports to speak for  
6 Mr. Schmieder.

7 MR. MARTIN: I put before Mr. Hall that folder  
8 because that was the one from which the letter which I ex-  
9 tracted came from.

10 As you know, I objected to the relevance of that  
11 folder and I did mean to suggest that Mr. Hall should read  
12 that folder.

13 Would this be a convenient time for a recess?

14 THE COURT: You want a short recess?

15 MR. MARTIN: Yes. I would appreciate it.

16 There is one matter I would like to cover before  
17 that. Your Honor indicated this morning that you would re-  
18 ceive character testimony from Mr. Fuller and Mr. Campbell.

19 Mr. Campbell is in Washington, D.C., and has  
20 indicated he will come up for that purpose.

21 Mr. Fuller will come down from Madison, Connecti-  
22 cut, where he now resides. I was wondering whether we could  
23 schedule them for 2:00 tomorrow.

24 THE COURT: Certainly.

25 MR. MARTIN: For their convenience. Then I will

1 rdsjp 20

Hall-direct

2 let them know this afternoon.

3 MR. DUFFY: We have no objection to taking them  
4 out of sequence. I just assume this is not going to be a  
5 terribly lengthy examination on Mr. Martin's part.

6 THE COURT: They will not. Character witnesses  
7 are usually not lengthy.

8 MR. MARTIN: Could we also take a recess at this  
9 time?

10 THE COURT: Yes.

11 (Recess.)  
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Hall-direct

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(Plaintiff's Exhibit 7A through M, 12A, 12B and 13 were received in evidence.)

THE COURT: We have had testimony concerning the wills which Mr. Hall, Jr. drew. Does it indicate what the provisions of the previous wills were?

MR. DUFFY: That is the exhibit to which we were referring, your Honor. You recall the discussion I had with Mr. Hall where--

THE COURT: What does that exhibit show about the previous will?

MR. DUFFY: The exhibit states as follows: The will of May 8, 1942 herewith enclosed was made for that purpose, and you will note that certain assets are left to the son and daughter of Mr. Hall or the survivor of them.

THE COURT: What is the date of that will?

MR. DUFFY: May 8, 1942.

THE COURT: Is that the first will we know nothing about?

MR. DUFFY: No, she says she has had other wills with similar provisions but she destroyed them when she got new wills. I think it's fair to say that since the receipt of the gift she had made other wills of similar tenor.

THE COURT: There is no evidence what the wills provided before the gift.

1 eljp 2

Hall-direct

2 THE WITNESS: I didn't think there was ever any  
3 distinction in those letters as to whether the wills she  
4 was talking about were prior to the gift or after.

5 THE COURT: I don't mean to interrupt you.

6 MR. DUFFY: It says, your Honor, in this letter,  
7 I am taking it a little bit out of context, but I think you  
8 will see in a minute how it fits in, "and I certainly feel  
9 very keenly since I received the gift in question that I  
10 wanted most of my property to go to such descendants of Mr.  
11 Hall's."

12 THE COURT: When was that letter?

13 MR. MARTIN: 9C, your Honor.

14 MR. DUFFY: From Helen Dwyer to one of the  
15 Washington attorneys, Alphonse B. Landa. It's marked as  
16 Exhibit 9C, your Honor.

17 BY MR. DUFFY:

18 Q Mr. Hall, you had testified a moment ago, if I  
19 recall correctly, something to the effect that you didn't  
20 want Kurt Schmieder pestering Mrs. Dwyer.

21 THE COURT: He didn't say he didn't want him, he  
22 said Mrs. Dwyer didn't want him.

23 Q Mrs. Dwyer didn't want him. What was the source,  
24 if you know, if Mrs. Dwyer's knowledge that Kurt Schmieder  
25 was pestering her or going to pester her?



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1 eljp 3 Hall-direct

2 A I believe I was the source of her knowledge.

3 Q How did you come to give her that knowledge?

4 A Because I thought that she should know about it.

5 Q When did you tell her this?

6 A I beg your pardon?

7 Q When did you tell her this?

8 THE COURT: What made you think that he was going  
9 to pester her?

10 THE WITNESS: Because Herman Graupner--I had  
11 received one from him, Herman Graupner had been receiving  
12 a number of letters from Kurt Schmieder which I believe are  
13 in the record, in which he wanted to know all about her  
14 assets, which I felt was none of his business, and I relayed  
15 the fact that he had inquired, to Graupner, I relayed it to  
16 Mrs. Dwyer, so she was aware of it. And I felt that I  
17 should save her from as much trouble as I could.

18 Q At what time, Mr. Hall, did you relay this infor-  
19 mation to Mrs. Dwyer?

20 A From time to time, when it came in.

21 Q These letters that you are referring to span a  
22 period of approximately ten years or so; is that correct?

23 A I don't remember. Where are they?

24 Q How did you know about the existence of these  
25 letters, Mr. Hall?

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1 eljp 4 Hall-direct

2 A These letters, being which?

3 Q The letters that you just referred to. The  
4 letters you have said that Mr. Schmieder wrote to Mr. Graup-  
5 ner.

6 A I came to know them because Mr. Graupner told me  
7 of them and in fact showed me some, I believe.

8 Q Did he show them to you or give them to you?

9 A He showed them to me and, of course, had to trans-  
10 late them because they were in German, as I recall.

11 Q Would it refresh your recollection if I told you  
12 that Mr. Graupner has previously testified that in every  
13 case he can recall he always gave you the letter?

14 A Whatever Mr. Graupner testified to doesn't re-  
15 fresh my recollection at all, sir.

16 Q What did you do with the letters that Mr. Graup-  
17 ner gave you?

18 A I don't think he gave it to me, maybe he did.  
19 If he did, I don't know what I did with it. Probably handed  
20 them back to him.

21 MR. DUFFY: Your Honor, Mr. Graupner is presently  
22 in Court and I would request that we might sequester Mr.  
23 Graupner during the testimony that will follow.

24 THE COURT: All right. Would you wait outside,  
25 Mr. Graupner. There is a witness room that you can use.



1 eljp 5

Hall-direct

2 (Mr. Graupner left the courtroom.)

3 Q You said that Mr. Schmieder wrote you on several  
4 occasions.

5 A Yes. I think it was two, Mr. Duffy.

6 THE COURT: You think it was two?

7 THE WITNESS: I think it was two.

8 Q Do you have copies of those letters?

9 A Not any more in my possession, but in my counsel's.

10 MR. DUFFY: May we have copies of those letters,  
11 Mr. Martin, please?

12 MR. MARTIN: Your Honor, the request is made at  
13 the worst possible time. I am looking through the file,  
14 but Mr. Turchin is more familiar with the file than I am.  
15 As soon as he comes back.

16 THE COURT: Here he comes.

17 MR. DUFFY: I can put some other questions while  
18 that is going on.

19 Q Mr. Hall, isn't it a fact that you kept a corres-  
20 pondence file on all correspondence from Kurt Schmieder to  
21 you or Mr. Graupner?

22 A I don't believe it is.

23 Q Isn't it a fact that every time Mr. Graupner re-  
24 ceived a communication from Kurt Schmieder, that he would  
25 communicate or he would discuss it with you?

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1 eljp 6

Hall-direct

2 A I don't know whether it was every time, but those  
3 occasions when he did, he did.

4 Q I take it Kurt Schmieder was someone of some  
5 importance in your mind and in Helen Dwyer's mind, is that  
6 correct?

7 MR. MARTIN: I object to the characterization,  
8 your Honor.

9 THE COURT: It is kind of vague.

10 Q What was the concern about Kurt Schmieder that  
11 you didn't want him pestering Helen Dwyer?

12 A Well, it was pretty obvious. The Alien Property  
13 Custodian had vested Helen Dwyer's property on the theory  
14 that it was Kurt Schmieder's. So we knew that Kurt Schmieder  
15 was at least a claimant to that property or owner of it prior  
16 to its passing to Mrs. Dwyer by gift from Jenny Bochman.

17 Kurt Schmieder also had confirmed the fact that  
18 it was an absolute gift by some sworn document that he had  
19 furnished for use in connection with the trial of the case  
20 down in Washington. So I knew that he had been at one time  
21 an owner of the property or had an interest in it before it  
22 became a gift to Helen Dwyer, and as soon as his letters  
23 started asking all about the gift and the property, it was  
24 very easy for me to sense that he was going to take the  
25 position that he was entitled to the funds or part of it,



1 eljp 7

Hall-direct

2 and I naturally wouldn't want him to be bothering Helen  
3 Dwyer.

4 MR. MARTIN: Your Honor, I am informed that Mr.  
5 Duffy has those letters already.

6 MR. DUFFY: Your Honor, I want the specific let-  
7 ters that Mr. Hall turned over to his attorneys. If the  
8 representation is that they have made copies of those letters  
9 available to us, that would be satisfactory.

10 MR. MARTIN: Excuse me, Judge. They are right  
11 in front of Mr. Gillespie at the moment.

12 (Handing.)

13 Q Are these the two letters that you are referring  
14 to, Mr. Hall? The letter that you received from Mr.  
15 Schmieder.

16 A I believe they are. I haven't seen them for  
17 many years, but I think they are.

18 Q Do you read German, sir?

19 A No, I do not.

20 Q Did you have those letters translated?

21 A I probably did. I can read a little, but I  
22 don't remember whether I did or not. But I probably asked  
23 Herman Graupner to, although I'm not sure.

24 Q What is the substance of those letters?

25 A You want a very slow--

1 eljp 8

Hall-direct

2 MR. MARTIN: Your Honor, an official translation  
3 was made. I'm happy to hand that up. This man doesn't  
4 speak German. Mr. Graupner will be here. I assume if there  
5 are any problems, we can check them.

6 THE COURT: You say there has been a translation  
7 made?

8 MR. MARTIN: We had a translation made of these  
9 letters.

10 THE COURT: For purposes of this litigation?

11 MR. MARTIN: Yes, your Honor.

12 THE COURT: I take it Mr. Graupner told you what  
13 the letters said at the time.

14 THE WITNESS: I assume so, sir. I honestly don't  
15 recall. I could in an hour with a German dictionary figure  
16 out what they mean. Part of this is in English. For in-  
17 stance a quotation. My guess is that I asked Herman  
18 Graupner what they meant. But I may not have.

19 MR. DUFFY: Mr. Martin, are these translations  
20 of the two letters that you gave me a moment ago of Mr.  
21 Schmieder.

22 MR. MARTIN: I think so. Also the easiest thing  
23 to do, I think we should start making some record of these.  
24 We have also the translation, so perhaps the better way is  
25 to offer the translations that Mr. Graupner did supply to



1 eljp 9 Hall-direct

2 Mr. Hall at the time. We have those also. If we could  
3 mark each letter with its translation--

4 MR. DUFFY: And then the official translations.

5 MR. MARTIN: And then the official translations.

6 MR. DUFFY: I take it there is no objection?

7 MR. MARTIN: My only objection is to relevancy.

8 MR. DUFFY: I submit, your Honor, that these are  
9 entirely relevant in view of Mr. Hall's statement that at one  
10 time he knew the property belonged to Schmieder.

11 THE WITNESS: Did I say that I knew it?

B2 12 MR. MARTIN: Your Honor, I object to the char-  
13 acterization. That wasn't testimony. He knew that there  
14 had been a claim in the Alien Property Custodian that it  
15 was Schmieder's and apparently he had some interest.

16 THE COURT: He said he knew it, but obviously  
17 it could only be from what Mr. Graupner was saying.

18 (Pause.)

19 THE COURT: I have read these letters. Mark  
20 them as some sort of exhibit.

21 MR. MARTIN: I would like my objection to be  
22 clear, your Honor. Also on the ground that they are hear-  
23 say, they are self-serving statements by Mr. Schmieder  
24 made some 18 years--

25 THE COURT: The relevance is as to the reaction

1 eljp 10 Hall-direct

2 if any that they produced.

3 (Plaintiff's Exhibits 30, 30A and B marked for  
4 identification.)

5 (Plaintiff's Exhibits 31, 31A and B marked for  
6 identification.)

7 THE COURT: They are received for the purpose of  
8 showing what reaction they produced.

9 (Plaintiff's Exhibits 30, 30A and B and Plain-  
10 tiff's Exhibits 31, 31A and B were received in evidence.)

11 Q Mr. Hall, is it my understanding that you believe  
12 Exhibit 31 was a claim from Kurt Schmieder?

13 A I don't know. Wait until I read it.

14 (Pause.)

15 A No, sir, I don't think that is a claim. It's  
16 asking for information on a subject which really is no con-  
17 cern of his, though. When it talks about his request for  
18 information and in the first of his letters to Herman Graup-  
19 ner.

20 Q Would you look at Exhibit 30 and tell me if that  
21 is a claim.

22 A No, I think again he is inquiring how the matter  
23 stands and again it is none of his concern.

24 Q But does it assert a claim?

25 A I don't think it asserts a claim, but it indicates



1 eljp 11 Hall-direct  
2 that he thinks he has an interest in it.

3 Q Would you point out to me that portion of this  
4 letter where you think he is asserting an interest?

5 THE COURT: He doesn't say he is asserting an  
6 interest, he says it indicates that he thinks he has an  
7 interest. And obviously he wouldn't be asking those ques-  
8 tions if he didn't think he had an interest.

9 Q I show you Mrs. Dwyer's letter dated September 28,  
10 1967, that is part of Exhibit 15B. Does that letter indi-  
11 cate to you that Kurt Schmieder was asserting a claim?

12 A It means to me that he was getting ready to.  
13 Otherwise, why would he be trying to locate her address?

14 Q How do you know it was Kurt Schmieder who was try-  
15 ing to locate her address?

16 A I assume it was.

17 Q Doesn't it say here that, "We have inquiries from  
18 the Union Bank of Switzerland which claim to be investigating  
19 on behalf of a 'long time customer.'"

20 A Yes.

21 Q You believe that that long time customer was  
22 Kurt Schmieder?

23 A I can't think of anybody else that would be  
24 interested in Helen Dwyer's affairs, from Switzerland.

25 Q Again, I quote this telegram. "Intend to be in

1 eljp 12

Hall-direct

2 New York between 20 and 30 November. Please cable whether  
3 you will be available. Answer is paid."

4 Is that asserting a claim?

5 A No, that is not asserting a claim.

6 Q And yet, somehow you felt that you had to protect  
7 Mrs. Dwyer from Kurt Schmieder?

8 A I certainly did. Or anybody else who might try  
9 to nose around her affairs.

10 Q Why were you so concerned about Kurt Schmieder  
11 nosing around her affairs?

12 A Because as I mentioned before, the vesting order  
13 named Kurt Schmieder as a former owner of this property, be-  
14 fore it had been made a gift to Helen Dwyer. And I simply  
15 assumed that he was going to claim that this has been a  
16 cloaking operation, in other words, assert a claim against  
17 her. Because that is what the Department of Justice, the  
18 position they had taken when they issued the vesting order.

19 Q Do you know approximately how much money was in  
20 Mrs. Dwyer's hands in 1967 and 1968 when Mrs. Dwyer received  
21 this letter or wrote this letter of September 28, '67, when  
22 she received the telegram of October?

23 A No, I do not.

24 Q But you did hold her power of attorney, you had  
25 authority to write checks on her checking account, you gave



395a

1 eljp 13

Hall-direct

2 her some financial advice, you assisted her in connection with  
3 the preparation of a trust, you had recently drawn her will  
4 and you had no idea of the extent of her property?

5 A That's correct. I have had power of attorney,  
6 general powers from several people and I have not had the  
7 vaguest ideas what their estates might be. I have had bank-  
8 ing powers from others and had no idea what their estates  
9 might be. The same is true with Helen Dwyer.

10 Q Did you have any belief as to the extent of Mrs.  
11 Dwyer's assets at the time this correspondence was being  
12 written?

13 A Do I have any belief--

14 THE COURT: Did you have any?

15 Q Did you?

16 A Did I have any belief? I don't recall having  
17 any belief. I don't recall trying to guess.

18 Q Did she live in a modest apartment?

19 A Modest by some standards and not modest by others.

20 Q Would you characterize her address as being  
21 fashionable?

22 A That is also a relative word. It may be fashion-  
23 able for me, but it wouldn't be for some wealthy people.

24 Q 240 Central Park South?

25 A Correct.

1 eljp 14 Hall-direct

2 Q That sounds like a very nice address, as far as  
3 I am concerned.

4 A It was not pretentious.

5 Q And she took trips to Europe?

6 A She did.

7 Q She had nice clothing, jewelry, furs?

8 A Not very much jewelry. She had one fur coat.

9 Her jewelry had a very low appraisal in her  
10 estate.

11 Q Wouldn't it be fair to say that if somebody were  
12 asserting a claim against Mrs. Dwyer, particularly a former  
13 owner of this property, that it would be a very large claim?

14 A I'm not sure that I remember all of that ques-  
15 tion. I think it is starting out with "would it be fair"  
16 to do something.

17 THE COURT: Would it be fair to assume that this  
18 was a substantial claim which Schmieder asserted?

19 THE WITNESS: It would be fair to assume that I  
20 thought it would be a substantial claim that would be  
21 asserted if he were asserting it.

22 Q You claim to have been very close to Helen  
23 Dwyer.

24 A Yes.

25 Q And you were very concerned about her welfare?



1 eljp 15

Hall-direct

2 THE COURT: Would you clue me in to where you  
3 are going, or would you prefer not to have the witness know?

4 MR. DUFFY: I would prefer to develop the line.

5 THE COURT: All right. At some point, let me in.

6 MR. MARTIN: Perhaps we could approach the side  
7 bar or ask Mr. Hall to step out into the hall for a moment,  
8 because it doesn't seem to be very relevant.

9 MR. DUFFY: I am going to put the question now,  
10 your Honor.

11 Q Mr. Hall, here is someone who, according to you,  
12 is intending to assert a very large claim against someone  
13 whom you were very close to. This seems to me to be of very  
14 great consequence--

15 MR. MARTIN: I object to it, your Honor.

16 THE WITNESS: It is a statement he made, not a  
17 question.

18 THE COURT: Do you agree with that statement?

19 THE WITNESS: You will have to repeat it.

20 Q All right. Mr. Hall, isn't it true that anyone  
21 who would assert a sizeable claim against Helen Dwyer was  
22 someone potentially important to you?

23 A Yes.

24 Q Wouldn't the correspondence with or about this  
25 potentially important person be something of some consequence

1 eljp 16

Hall-direct

2 to you?

3 A At what point?

4 THE COURT: At the time it happened.

5 THE WITNESS: Yes.

6 Q None of these letters appear to be asserting a  
7 claim. Are there other letters that appear to assert a  
8 claim?

9 A I think they indicate an intention to assert a  
10 claim. I didn't say that he was asserting a claim. I think  
11 I denied I thought he was.

12 Q Did you keep a file on Kurt Schmieder?

13 A No, I did not keep a file on Kurt Schmieder.

14 Q Would it be your testimony, then, that you never  
15 retained any of the documents or any documents that Herman  
16 Graupner may have given you concerning Kurt Schmieder?

17 A That was not my testimony, and it isn't now. I  
18 said I didn't keep a file on Kurt Schmieder, which you asked  
19 me before.

20 Q Did you retain correspondence that either you or  
21 Mr. Graupner received from Kurt Schmieder?

22 A I believe I retained the correspondence that I  
23 received from Kurt Schmieder, but I don't really recall.

24 Q Would you retain any correspondence that you or  
25 Mr. Graupner sent to Kurt Schmieder?



1 eljp 17

Hall-direct

2 A Would I retain any--

3 Q Would you retain copies of any correspondence  
4 that you or Herman Graupner would have sent to Kurt  
5 Schmieder?

6 A I would have retained any copies of correspondence  
7 that I had sent to Kurt Schmieder, but I wouldn't have  
8 correspondence that Graupner had sent to Kurt Schmieder un-  
9 less Mr. Graupner had given me the copies of his corres-  
10 pondence to Mr. Schmieder.

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2

O When Kurt Schmieder wrote Mr. Graupner,

3

would Mr. Graupner then discuss Kurt Schmieder's letter

4

with you?

5

A He did on occasion. You said would he. He

6

did.

7

THE COURT: Would you step out a minute.

8

(The witness left the courtroom.)

9

THE COURT: What is the purpose of all

10

this? What are you trying to establish?

11

MR. DUFFY: Your Honor, this witness and

12

Mr. Graupner together know a great deal more about this

13

transaction than they are telling us, in my opinion.

14

These were important events. Some of them are rather

15

of recent vintage as to which Mr. Hall purports to have

16

no or minimal recollection.

17

I suggest that --

18

THE COURT: I don't see how you are getting

19

it that way. He said -- these events were in what

20

year?

21

MR. MARTIN: So recent as 1956 and 1963.

22

Almost yesterday.

23

MR. DUFFY: They continue right up through

24

1968.

25

THE COURT: It seems to me you can ask him



1 rda2 Hall-direct

2 what his recollection is. All you are doing is arguing  
3 with him. It seems to me you should argue with me  
4 later.

5 MR. MARTIN: There is in fact a file of  
6 correspondence that we have that Mr. Duffy had in the  
7 surrogate's proceeding -- he had last week -- of copies  
8 of letters that Mr. Graupner received from Mr. Schmieder  
9 and letters that Mr. Graupner wrote back to Mr. Schmieder  
10 beginning, I think, around '56. I don't think they  
11 are all very relevant but they are here. They are  
12 in court. Mr. Duffy has seen them before. There  
13 is no secret about them.

14 THE COURT: Certainly the witness doesn't  
15 have the recollection I thought he should have. But  
16 that's an argument you can make with me and not with  
17 him.

18 MR. DUFFY: All right, your Honor.

19 (The witness returned to the witness stand.)

20 BY MR. DUFFY:

21 Q Mr. Hall, I show you defendant's answer,  
22 the original answer filed by the defendant in this pro-  
23 ceeding, and I direct your attention to paragraph  
24 Fifth, specifically the last several lines of that para-  
25 graph which appear at the bottom of the first page, if

1 rda3

Hall-direct

2 I am not mistaken.

3 THE COURT: Is this the answer filed by  
4 Mrs. Dwyer?

5 MR. DUFFY: This is the answer filed by  
6 Mrs. Dwyer.

7 THE COURT: I was going to say before  
8 she died but I guess that's awful.

9 THE WITNESS: It's before she died.

10 THE COURT: You are directing his attention  
11 to what?

12 MR. DUFFY: To the last paragraph on that  
13 page, specifically the last portion.

14 THE COURT: On the first page?

15 MR. DUFFY: First page.

16 A Paragraph Fifth says:

17 "Denied each and every allegation in paragraph  
18 6 herein except plaintiff made a gift of property to the  
19 defendant who was at the time a secretary in a law  
20 office."

21 Q You said before it was a fact, if I am not  
22 mistaken, that Kurt Schmieder owned the property that  
23 Mrs. Dwyer got from Stoneleigh Corporation.

24 MR. MARTIN: I object, your Honor.  
25 It's a mischaracterization of the witness' testimony.



1 rda 4

Hall-direct

2 I think your Honor has stated the situation before.

3 A I have no way of knowing whether it was his  
4 property or not. You know that, Mr. Duffy.

5 Q Apparently Mrs. Dwyer knew that when she was  
6 alive?

7 A She didn't know it either.

8 THE COURT: She admitted it for the purposes  
9 of litigation.

10 MR. MARTIN: The record should also  
11 reflect, your Honor, that that answer was subsequently  
12 amended and that admission does not appear in the amended  
13 answer.

14 Q Mr. Hall, what transpired between 1969,  
15 October 16, 1969, when Mrs. Dwyer filed this answer and  
16 when you filed an amended answer withdrawing this admis-  
17 sion?

18 MR. MARTIN: I object to that question.  
19 Both these answers were filed by the attorneys. They  
20 are signed by the then Mr. Owen, who was the counsel.

21 THE COURT: Well, he can say if he knows  
22 why the change was made.

23 Q Do you know why the change was made?

24 A I don't know what changes were made, Mr.  
25 Duffy.

1 rda5

Hall-direct

2 THE COURT: Apparently that admits Mr.  
3 Schneider gave a gift. In a subsequent answer filed  
4 by you it eliminated that admission. Did you discuss  
5 that with anybody?

6 THE WITNESS: I don't recall. I probably  
7 did. If Mr. Turchin or Judge Owen made that change,  
8 he undoubtedly did it by discussing it with me. I  
9 don't recall.

10 Q Mr. Hall, what is the nature of your relation-  
11 ship with Herman Graupner?

12 A We are friends.

13 Q Do you have any business associations?

14 A Yes. He and I are co-trustees of a trust,  
15 testamentary trust. We have been trustees of an  
16 intervivos trust which has terminated. I have handled  
17 some litigation for him.

18 Q Approximately what is the frequency of you  
19 and he meeting together?

20 A Well, it varies. In the summertime, when  
21 he is down in Cape May from June through September or  
22 so, it is very infrequent. Perhaps once during the  
23 summer.

24 Other times it could be maybe once a month.

25 Q Mr. Hall, do you have any knowledge of your



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father's, or the nature and extent of your father's wealth in 1938?

A No, sir, I do not.

Q Do you know the approximate size of your father's estate when he died?

A Yes, but I have but I have difficulty recalling it, Mr. Duffy. I can get it for you.

Q You were a beneficiary of that estate, were you not?

A No.

Q Your mother's estate, which was derived from your father's estate?

A Yes.

Q What was your interest in your mother's estate? In relation to your sisters, was it equal?

A I was one-third beneficiary of my mother's estate.

THE COURT: Your mother died?

THE WITNESS: Yes, two or three years after my father.

THE COURT: And your father left substantially all of his money to your mother?

THE WITNESS: Yes.

THE COURT: And you were a one-third bene-

rda7

Hall-direct

1        rda7  
2        ficiary of your mother's estate, which was largely  
3        derived, I take it, from your father's estate?

4                THE WITNESS:        Yes, I think it must have  
5        been.

6                Q        Approximately how much did you receive from  
7        your mother's estate?

8                A        Between 100, 150 thousand dollars, I think,  
9        Mr. Duffy.

10              Q        And --

11              THE COURT:        That's after taxes?

12              THE WITNESS:        Yes.

13              Q        Would it be fair to say --

14              A        I'd like to check it but that's my recollec-  
15        tion.

16              Q        Would it be fair to say that your sisters  
17        received a similar amount?

18              A        It would be fair, yes.

19              THE COURT:        You are establishing that Mr.  
20        Hall, sr. was reasonably wealthy?

21              MR. DUFFY:        I am showing what he had.

22                        Your Honor, we have no further questions of  
23        Mr. Hall.

24              MR. MARTIN:        What is your Honor's pleasure  
25        as to how late you want to sit this evening, Judge?



rda8

Hall-cross

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1 THE COURT: Well, the next thing I have  
2 is 5 o'clock, so we can go until then.  
3

4 CROSS EXAMINATION

5 BY MR. MARTIN:

6 Q Mr. Hall, would you tell us when was the law  
7 firm of Putney, Twombly & Hall founded or what was the  
8 inception fo that firm, whatever the name may have  
9 been?

10 A William P. Putney was the original founder,  
11 and that was 1870 or thereabouts.

12 Q And you say you joined the firm or became  
13 the first associate with that firm in 1934, is that  
14 correct?

15 A That's correct.

16 Q What about your father, when did he become  
17 associated with that firm?

18 A In 1900.

19 Q And can you tell us something about your  
20 father's background?

21 A Well, he was born in Naugatuck, Connecticut  
22 in 1875. He went to Amherst College on borrowed  
23 money which he paid back later. He went to Columbia  
24 Law School and graduated in 1900. He passed the  
25 bars in 1899 before he graduated. He went directly

1 rda9

Hall-cross

2 to the firm of Putney & Twombly, which I believe was  
3 the name at that time. He became associated with them  
4 and became a partner somewhere between 1910 and 1920.

5 Q And what was the nature of your father's  
6 practice?

7 A Basically corporate law, commercial law,  
8 some trusts and estate work, some little taxation.

9 Q And did your father serve on the board of  
10 directors of any corporations, as far as you know?

11 A He did.

12 Q Which corporations were they?

13 A Botany Worsted Mills in Passaic, New Jersey.  
14 He was a director and a vice president, I believe.  
15 International Salt Company of then Scranton, Pennsylvania.  
16 He was a director, vice president and executive committee  
17 member. He was general counsel to both companies,  
18 general counsel to Bishop, McCormack & Bishop, which  
19 was the largest, I believe, automobile dealership in  
20 Brooklyn, and an officer of that company.

21 Q Did he ever hold any elective or appointive  
22 public duties?

23 A The only public office he held was a town  
24 judgeship in New Canaan, Connecticut.

25 Q How long a period did he hold that town judge-



1           rdal0                           Hall-cross

2           ship?

3                   A           It was a matter of a few years.

4                   Q           And you told us you knew Helen Dwyer, is  
5           that correct?

6                   A           I didn't hear you.

7                   Q           I say you knew Helen Dwyer, is that correct?

8                   A           Yes.

9                   Q           And you are the executor of her estate, are  
10          you not?

11                  A           Yes.

12                  Q           You were for some period her employer?

13                  A           My firm was.           She worked for me but was  
14          paid by the firm.

15                  Q           Could you tell us something of Helen Dwyer's  
16          background?

17                  A           Well, she was an orphan, born in Indiana an  
18          orphaned.       She was brought up by an aunt and uncle --

19                   THE COURT:       At what age was she orphaned?

20                   THE WITNESS:     I'm not sure, Judge.       But

21          it must have been a fairly early age.       This was the  
22          Stella Davis and her husband.

23                  A           She was married and eventually divorced.

24          Her husband was in the U. S. Navy, I believe, and wound  
25          up in a Veterans Hospital.       I believe he was insane.

1 rdall

Hall-cross

2 Q Was that some time in the early 1920s that  
3 he was institutionalized?

4 A Yes, I'm sure it was before her employment  
5 by the firm. And she had been self-supporting. She  
6 had worked --

7 THE COURT: Was she divorced before the  
8 employment by the firm?

9 THE WITNESS: Yes.

10 A She had been working with the Treasury De-  
11 partment and then with the Alien Property Custodian,  
12 where she was employed when my father met her.

13 She was, as I say, self-supporting and inde-  
14 pendent.

15 MR. MARTIN: May I have these marked as  
16 1, 2 and 3.

17 (Defendant's Exhibits A-1, A-2 and A-3 were  
18 marked for identification.)

19 MR. MARTIN: May I have these marked as A-4  
20 and A-5.

21 (Defendant's Exhibits A-4 and A-5 were  
22 marked for identification.)

23 Q Let me show you A-1, 2 and 3 for identifica-  
24 tion, Mr. Hall, and ask you to tell the court what  
25 those are.



rdal2

Hall-cross

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1           A       These are passports of my father.

2           Q       And where were those passports -- how did you  
3           come into possession of those passports?

4           A       They were in his files at the time of his  
5           death.

6           MR. MARTIN:       I would offer those three  
7           passports together with what has been marked A-4 and  
8           A-5 for identification, A-4 being a subpoena that we  
9           caused to be served on the Department of State, and  
10          A-5 is the response to that subpoena.

11          The purpose of this offer is to show  
12          through Mr. Hall's passports and the applications for  
13          those passports that Mr. Hall was in Europe only in 1935,  
14          1939 and 1949.

15          THE COURT:       Do you concede that those  
16          show that?

17          MR. DUFFY:       Yes, your Honor.

18          THE COURT:       Well, let's stipulate that those  
19          facts exist and withdraw the offer of the exhibits.

20          MR. MARTIN:       Fine, your Honor.

21          Q       Mr. Hall, you were asked some questions  
22          about conversations at or about the time Stoneleigh was  
23          set up and at or about the time that a gift was made  
24          of that property in Stoneleigh to Mrs. Dwyer.  
25

rdal3

Hall-cross

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1                   rdal3                   Hall-cross                   173  
2                   Did you at that time hear the name Kurt Schmie-  
3 der?

4                   A           No, sir, I did not.

5                   Q           As far as you knew at the time, was Kurt Schmie-  
6 der a client of the firm of Putney, Twombly & Hall?

7                   A           He was not.

8                   Q           When for the first time that you can recall  
9 did you hear the name Kurt Schmieder?

10                  A           The first time I really recall it was when  
11 the vesting order was issued and we learned about it in  
12 the office.     I may have heard about it before then but  
13 that's the first time that I recall.

14                  Q           Now, you were asked about conversations with  
15 your father and/or Mrs. Dwyer at or about the time of  
16 the gift.     Did you, subsequent to the time property  
17 was transferred, have occasion to discuss with your father  
18 and Mrs. Dwyer the circumstances surrounding the gift?

19                  A           The circumstances surrounding the gift?

20                  Q           Well, did you have occasion to discuss --  
21 let's take your father first.     Did you have occasion  
22 at some time after the gift was made -- did you ever  
23 have occasion to discuss that gift with him?

24                  A           Yes, I did.

25                  Q           And what occasioned those discussions, as



rdal4

Hall-cross

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best you can recall?

A In particular when the vesting order came down Kurt Schmieder was named in the vesting order.

Q Well, what did your father have to say about the gift at the time of these conversations? Can you tell us what he said then?

A Well, only that it had been a total, absolute gift, and used the expression "no strings attached," from Jenny Bochman to Helen Dwyer, and the fact that Kurt Schmieder's name came into the picture later was something that had not been mentioned to me until after the gift was made.

Q Did your father ever tell you that he had an agreement with Mrs. Dwyer that she would ultimately pass that property on to you and your sisters?

A No, sir, never.

Q Did you have occasion to have any discussion about the gift with Mrs. Dwyer subsequent to the time?

A Not at the time of the gift, I'm sure.

Q What about after the vesting proceedings began?

A Then indeed I had to or did get into the litigation and in Washington after my father's death.

Q And did that occasion you to have discussions

rdal5

Hall-cross

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1 with Mrs. Dwyer about this subject?

2 A Definitely.

3 Q What did she tell you with regard to the  
4 gift?

5 A In the first place, that the vesting order  
6 should be a nullity or was a nullity because it claimed  
7 to vest Kurt Schmieder's property whereas the property  
8 was totally hers by virtue of the gift; that she had  
9 taken it on the sole condition that it be absolute and  
10 that there be no obligation to anyone with respect to  
11 it.  
12

13 THE COURT: Did she tell you why she  
14 insisted on that condition?

15 THE WITNESS: My father had advised her  
16 not to accept it without that. I think that's what  
17 she told me.

18 THE COURT: Did she tell you why your  
19 father thought that way?

20 THE WITNESS: Because it would be illegal  
21 to do it, to accept it with any condition that it be  
22 held for anybody else and not disclose it.

23 THE COURT: It wouldn't be illegal if she  
24 did disclose it?

25 THE WITNESS: Yes. That is not what



1 rdal6

Hall-cross

2 Jenny Bochman wanted.

3 Q Did Mrs. Dwyer ever tell you, sir, that she  
4 had promised your father that she would will this property  
5 to you and your sisters?

6 A Never.

7 MR. DUFFY: Your Honor, I know leading  
8 questions are somewhat permissible on cross examination  
9 but this is going a little bit far. I let a couple  
10 of them go by.

11 MR. MARTIN: My only purpose is to estab-  
12 lish a motive and to do that without leading questions  
13 is impossible.

14 THE COURT: The answer is quite obvious,  
15 the answer which you expect.

16 MR. MARTIN: I would be very surprised  
17 if the witness were otherwise, Judge.

18 Q You were asked about certain provisions of  
19 Mrs. Dwyer's wills as they had been concluded at various  
20 stages in her life. Particularly, there was some  
21 discussion of the fact that one of the wills left the  
22 residue of Mrs. Dwyer's estate to you, half to you and  
23 half to one of your sisters in trust. Whose decision  
24 was it to have the half left to your sister in trust  
25 placed in a trust?

1 rdal7

Hall-cross

2 A It was Helen Dwyer's.

3 Q Was that your suggestion to her?

4 A No, sir.

5 Q And apparently that will did not leave any-  
6 thing, am I correct, to one of your sisters?

7 A If it is the one I'm thinking of, that's  
8 correct.

9 Q And whose decision was that?

10 A They were all Helen Dwyer's decisions.

11 THE COURT: Did she tell you why she  
12 was discriminating against one sister?

13 THE WITNESS: No, sir, nor did I ask.

14 MR. DUFFY: Your Honor, again these are  
15 leading questions. My recollection is that Mr. Hall  
16 testified earlier when I went into the same subject  
17 that he had no recollection and now he apparently has  
18 an excellent recollection.

19 THE COURT: You can argue that.

20 MR. DUFFY: I am objecting particularly  
21 because of the leading nature of the question.

22 MR. MARTIN: I think those were not leading.

23 THE COURT: I don't think it was particu-  
24 larly leading. He said whose particular recommendation  
25 was it?



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Hall-cross

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Q I believe you testified that you prepared a will for Mrs. Dwyer in 1966, is that correct?

A Yes. I received a previous will of hers.

Q And do you recall approximately when that rule was executed?

A This is 1966?

Q Yes.

A Yes, it was in September.

Q I show you what has been marked as Defendant's Exhibit I for identification and ask you if you can identify that.

A Ask if I --

Q Can you identify that document?

A Yes. This is a letter which Helen Dwyer left with me to keep with the will she executed at about this time.

Q Did you recognize the handwriting on that?

A It's her handwriting.

Q And the signature?

A Her signature.

MR. MARTIN: Your Honor, I would offer Defendant's Exhibit I for identification into evidence.

MR. DUFFY: No objection to that.

THE COURT: Received.

rdal9

Hall-cross

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(Defendant's Exhibit I was received in evidence.)

THE COURT: What in substance does that purport to show?

MR. MARTIN: What it says, your Honor, and I can probably read briefly two portions of it.

"Dear Lou:

"My will of course expresses my desires as to disposition of my assets."

THE COURT: Who is it written by and to?

MR. MARTIN: By Mrs. Dwyer to Mr. Hall.

That's the very first sentence. The very last paragraph of the letter reads:

"Knowing and being associated with you and the Hall family has meant so much to me over the years and I thank you for all you have done for me."

Signed, "As ever."

THE COURT: Did she say she gave you that letter to put with the will?

THE WITNESS: Yes. How to handle things that weren't specified in the will.

MR. MARTIN: Her burial instructions and so forth.

Q I show you Defendant's Exhibit L for identifi-



rda20

Hall-cross

180

1 cation and ask you to tell us what that is.

2  
3 A That is Helen Dwyer's will or a photocopy  
4 of it.

5 Q Is this the will that has now been admitted  
6 to probate?

A It is.

8 Q When was that will prepared, sir?

9 A In 1966.

10 MR. MARTIN: I offer that in evidence.

11 MR. DUFFY: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit L was received in  
14 evidence.)

15 MR. MARTIN: Would this be a convenient  
16 place? I think I may be finished with Mr. Hall.  
17 I do want to have an opportunity to review my notes.

18 THE COURT: I would like to ask him some  
19 questions.

20 I'm frankly surprised at your lack of recol-  
21 lection or parts of your conversations with Mrs. Dwyer  
22 when these wills were prepared. It seems to me as  
23 an attorney you must have realized that drawing a will  
24 leaving most of the property to yourself and your family  
25 would draw questions.

rda21

Hall-

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1 THE WITNESS: Well, your Honor, the first  
2 will I ever saw of hers already had me in as a bene-  
3 ficiary. Actually, any time she wanted to change  
4 her will she would tell me so and she would tell me  
5 exactly what she wanted to change in it. I didn't pro-  
6 test. I made the wording to fit whatever change she  
7 wanted to make, but the changes themselves, nothing  
8 that would call for very much discussion really. She  
9 knew what she wanted to do and she told me and I did it.

10 THE COURT: Did you ever discuss with her  
11 the advisability of taking care of her own cousins even  
12 though they weren't close?

13 THE WITNESS: No, sir, I did not. She  
14 had already provided for them in her first will and  
15 it had not occurred to me. She was not close to her  
16 cousins --

17 THE COURT: Isn't there a canon of ethics  
18 or a presumption if a lawyer draws a will to his own  
19 benefit --

20 THE WITNESS: That is the Putnam case they  
21 are talking about.

22 MR. MARTIN: There is a case, the matter  
23 of Putnam, which deals with the issue. It does not  
24 say it is prohibited. It does say when that is done  
25



rda22

Hall-cross

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1 there has to be proof that that is what the deceased  
2 intended. That was a subject of the Surrogate's Court  
3 proceeding in this case.  
4

5 THE WITNESS: The attorney who draws it  
6 has to give an explanation as to why. The burden is  
7 still on the testator.

8 THE COURT: It was my general understanding  
9 of the law that it didn't occur to you to you to  
10 have some other lawyer advise her on this?

11 THE WITNESS: Hindsight is wonderful but  
12 didn't know of the case at this time.  
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Hall-cross

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THE COURT: I didn't with the business, because I--

THE WITNESS: No, the rules after that say that a witness cannot be a beneficiary without losing his legacy. But I did not know the Putnam case, and I had no qualms about this at all, because Helen and I had always been on very close terms. She trusted me and I trusted her, and what she said went as far as I was concerned.

I was flattered to be included in her will, but I didn't say, make the cousins bigger beneficiaries and me less. As a matter of fact, I think almost every revision that I did cut down my personal share. So I mean, if there is any thought that I was trying to increase my personal share, that will show that I didn't. But I had no thoughts on that subject at all until I finally, in 1970, asked Mr. Whipple to draw up a new will for her that she wanted done.

But even then I acted as the intermediary to give him the instructions. It had not occurred to me--

THE COURT: Why did you have him draw the will?

THE WITNESS: Because he was already familiar with her financial affairs, he was running the trust for her up there in Boston. And I just had a feeling, here I am, almost acting as my own attorney. It was just a feeling



1 eljp 2

Hall-cross

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2 I had.

3 I would rather have some other attorney draw  
4 her will for her. Until then there had been no other  
5 attorney who knew her affairs and who would be in a posi-  
6 tion to draw her will. She would have to tell all other  
7 financial, whatever would be necessary to a strange attor-  
8 ney, and she d... 't want to do that.

9 All I can say is, it really never occurred to  
10 me particularly. I could be criticized for it.

11 MR. MARTIN: I think I will have no further  
12 questions for Mr. Hall in the morning, but I would just  
13 like to review my notes.

14 THE COURT: All right. Do you have any?

15 MR. DUFFY: I have a few.

16 REDIRECT EXAMINATION

17 BY MR. DUFFY:

18 Q Mr. Hall, you testified a moment ago that your  
19 father was a director and general counsel of a firm called  
20 Botany Worsted Mills.

21 A Yes.

22 Q Where was that firm located?

23 A Passaic, New Jersey.

24 Q Would that have been the successor firm to a  
25 firm called Garfield Worsted Mills, also located in Passaic?

eljp 3

Hall-redirect

185

1  
2 A I believe that it acquired Garfield Worsted  
3 Mills.

4 Q In answer to Mr. Martin's question as to when  
5 your father met Mrs. Dwyer, you answered that he met her  
6 while she was employed at the Alien Property Custodian in  
7 Washington.

8 A I think I answered that.

9 Q Do I take that to mean that your father had some  
10 dealings with the Alien Property Custodian?

11 A Yes, you can take it to mean that. I think he  
12 did.

13 Q Was that an area of his competence?

14 A He worked, I believe, in conjunction with an  
15 attorney named George Ward in Washington in connection with  
16 claims of former enemy aliens whose property had been taken  
17 in World War I.

18 Q Your father at least to that extent was familiar  
19 with the Trading With the Enemy Act and wartime legislations,  
20 is that fair to say?

21 A I would assume so.

22 Q About how many people did he represent for the  
23 Alien Property Custodian?

24 A I haven't any idea how many or who.

25 Q Do you know how many German nationals your



1 eljp 4

Hall-redirect

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2 father represented?

3 A I have already told you, I don't know how many  
4 or who.

5 Q During approximately the last five years of  
6 Helen Dwyer's life, that would be the period of about 1965  
7 to 1970, how frequently would you have seen Helen Dwyer  
8 on a social basis?

9 A I can't recall, Mr. Duffy.

10 Q Did you have any social contacts with Helen  
11 Dwyer in that period?

12 A Yes, I'm sure I must have.

13 Q You are sure you must have?

14 A I went to see her in the hospital, which is  
15 surely not business. I suppose you'd call it social. I  
16 can't remember the five year period, I mean, I can't re-  
17 member how often during the five year period. I would guess,  
18 oh, once every three months or so.

19 Q The trips to the hospital or the visits to the  
20 hosp'tal, weren't they more to attend to business and finan-  
21 cial affairs, sign checks, pay bills, bring mail--do things  
22 like that?

23 A I didn't have to go to the hospital to sign  
24 checks for her, Mr. Duffy. I went to her apartment and got  
25 her bills and paid those. But my visits to the hospital

1 eljp 5

Hall-redirect

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2 really were to see her, cheer her up and see how she was  
3 doing.

4 Q How many such visits were there?

5 A I don't remember. She was in the hospital from  
6 I think the middle of December for perhaps a month, and I  
7 saw her several times during that period.

8 Q You are saying December. Is that December,  
9 1969?

10 A Yes.

11 Q Between 1965 and that hospital visit, how many  
12 occasions did you have to visit Mrs. Dwyer socially?

13 A I think that is what I mentioned before. I  
14 guess every three months or so, three or four times a  
15 year. Perhaps more.

16 Q What would be the occasion of these visits?

17 A She might have asked me to come up and say  
18 hello once or twice when I was staying in town, and here  
19 again I'm not sure during that period, I would take her out  
20 to dinner. I can't recall any particular causes or occa-  
21 sions for the visits.

22 Q Mr. Hall, you are quite certain that the hos-  
23 pital visits were social?

24 A Yes, of course they were social. They may also  
25 have been business. What other reason do you have in mind?



1 eljp 6

Hall-redirect

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2 Perhaps we are not talking the same language.

3 Q Do you remember on December 17th, Mr. Owen  
4 asked you, at page 317, towards the middle of the page:5 "You had previously been at the hospital on  
6 two occasions, two periods?7 "A Yes. The visits to the hospital were in a  
8 sense social. They were social but they were also to dis-  
9 cuss the payment of her bills, and so forth."10 Isn't it true, Mr. Hall, that most of the meet-  
11 ings that you had with Helen Dwyer during the last five  
12 years of her life were of that type? They were to discuss  
13 the payment of bills, they were to discuss the handling of  
14 her financial affairs while she was out of the country on  
15 trips; they were to tend to various business and financial  
16 matters in which she was involved?17 A I don't know whether they were or not, Mr.  
18 Duffy. Some of them were probably purely social. I might  
19 have been up in the area and stopped in to say hello, I  
20 might have taken her out to dinner because I was staying  
21 in town overnight. They might have been business if she  
22 was preparing to go on a trip and wanted me to pay the  
23 rent.

24 Q They might have been?

25 A That's right; they might have been.

eljp 7

Hall-redirect

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Q Mr. Hall, I'm showing you your Exhibit L for identification. Do you happen to recall Mrs. Dwyer's maiden name?

A Helen Berry, I think Mulliken.

Q Mulliken?

A I think so.

Q How is that name spelled in the will?

A M-i-l-l-i-k-e-n.

Q Would you look at the signature page where Mrs. Dwyer signed that will?

A Yes.

Q Is there an error on that page requiring correction?

A No, it's completed.

Q How is it completed?

A By handwriting, looks like Mr. Ordman's handwriting.

Q Is there any indication on that will, Mr. Hall, that Mrs. Dwyer was aware of the misspelling of her family name or the error?

A There isn't any indication that she was or that she wasn't.

Q Did you show her a copy of that will before you asked her to sign it?



mcjp 8

Hall-redirect

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1           A       I didn't ask her to sign it. I did show her  
2  
3 a copy of it.

4           Q       Did she read it?

5           A       Of course she read it.

6           MR. DUFFY: No further questions, your Honor.

7           MR. MARTIN: Your Honor, I think I have one or  
8 two questions and I might finish with the witness tonight.

9           THE COURT: We have a sentence at 9:30, so why  
10 don't we meet at 9:30 tomorrow?

11           MR. DUFFY: Your Honor, we also have a witness  
12 under subpoena. With the witness fee being paid for the  
13 second day. It is Mr. Graupner.

14           THE COURT: Would you say I request that he be  
15 here.

16           MR. MARTIN: I will say you directed him and  
17 Mr. Duffy said he'd pay him.

18           MR. DUFFY: He has been paid.

19           (Adjourned to July 1, 1975.)  
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## TRIAL TRANSCRIPT BEFORE HON. WHITMAN KNAPP ON JULY 1, 1975

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KURT SCHMIEDER

V.

69 CIV. 1939 (WK)

LOUIS H. HALL, JR.

July 1, 1975  
9:30 a.m.

oOo

(In open Court.)

THE COURT: Proceed.

MR. MARTIN: Mr. Schaeffer has, your Honor, produced and delivered to me to bring into Court the file that contained the letters Mr. Duffy wanted to introduce yesterday. So he has that file.

MR. DUFFY: On the same occasion I spoke with Mr. Schaeffer relative to our belief that many of the investigative reports contained in the Government's files would be properly admissible in this proceeding. Mr. Schaeffer would have no objection to those reports being admitted and is going to bring the balance of his files over.

It occurs to me that since the recollections of one of the principal characters was so spotty and there is such a large story that is yet untold because it is



1 rdsjp 2

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2 unremembered, that these reports would shed considerable  
3 light on the subject and we would like to offer them in  
4 evidence later on.

5 THE COURT: I will deal with them then when  
6 you do.

7 MR. DUFFY: The two letters that I wish to  
8 introduce are letters dated November 8, 1935 and December  
9 26, 1935.

10 THE COURT: From whom to whom?

11 MR. DUFFY: From L.H.H. to Mrs. Jenny Bochman.

12 THE COURT: Who was it from?

13 MR. DUFFY: L.H.H. would be Louis Hall, Sr.

14 I believe their relevance is many-fold. They  
15 are typed by H.D., Helen Dwyer, and it ties in the sequence  
16 of events between the 1935 meeting that Mr. Hall acknowl-  
17 edges he had with Kurt Schmieder and the subsequent forma-  
18 tion of Stoneleigh Corporation.

19 THE COURT: So Mr. Hall remembers and Mr.  
20 Schmieder doesn't.

21 MR. DUFFY: They remember but it is a question  
22 of timing.

23 MR. MARTIN: Mr. Schmieder places it in 1928  
24 and Mr. Hall in 1935.

25 THE COURT: 1938 I thought Mr. Schmieder placed

1 rdsjp 3

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2 it at.

3 MR. MARTIN: Mr. Hall in his lifetime apparently  
4 met Mr. Schmieder twice. Once was in 1935. That is accord-  
5 ing to Mr. Hall. Mr. Schmieder says that was in 1928.

6 THE COURT: I thought it was 1938.

7 MR. MARTIN: Then there is a meeting in 1939.

8 MR. DUFFY: Mr. Schmieder said that meeting  
9 occurred in 1938 and Mr. Hall said it occurred in 1939.  
10 They agree there was a meeting.

11 What the problem is is fixing the date of the  
12 meeting.

13 MR. MARTIN: These are two letters to Mrs.  
14 Bochman, your Honor, apparently from Mr. Hall. They are  
15 about Stoneleigh. I have no objection to them.

16 THE COURT: Why don't you have clean copies  
17 typed of them?

18 MR. DUFFY: I will be happy to do that, your  
19 Honor. It would be necessary for me to have that file in  
20 my possession overnight then.

21 MR. MARTIN: That may make Mr. Schaeffer unhappy.

22 MR. DUFFY: It may.

23 MR. MARTIN: Maybe he can make the offer to  
24 him that he can have them retyped.

25 THE COURT: The Government, I guess, has



1 rdsjp 4

2 resources to type those two documents.

3 MR. MARTIN: I would think they can get it  
4 done within a month or so, your Honor.

5 (Laughter.)

6 (Plaintiff's Exhibits 32 and 33 are received in  
7 evidence.)

8 MR. DUFFY: Your Honor, I believe that Mr.  
9 Schaeffer will be back in Court within the hour or so. So  
10 we can ask him at that time.

11 THE COURT: All right.

12 MR. DUFFY: Your Honor, I had discussed with  
13 Mr. Martin prior to Court this morning our desire to put  
14 a few more questions to Mr. Hall. Mr. Martin would like  
15 to put a few more questions to Mr. Hall also. He is not  
16 here yet.

17 THE COURT: Yes, he is.

18 MR. DUFFY: Fine. Then can we ask him to take  
19 the stand?

20 THE COURT: Yes.

1 lb am rdrf 1

Hall-cross

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2 LOUIS H. HALL, JR. resumed

3 the stand and testified further as follows:

4 CROSS EXAMINATION

5 BY MR. MARTIN (Continued):

6 Q Mr. Hall, you were asked yesterday whether or not  
7 you had a power of attorney for Helen Dwyer.

8 Could you tell us, did you have such a power?

9 A I had a general power and I had a special power  
10 for drawing checks on her account.

11 Q And what were the circumstances that led to your  
12 receiving those powers of attorney from Mrs. Dwyer?

13 A Well, when she traveled she wanted someone  
14 would be able to take care of her affairs in her absence,  
15 or in case she might become ill. She left these powers  
16 with me so that I could do whatever was necessary in her  
17 absence. And I used the banking power several times to  
18 draw checks as her attorney in fact to pay whatever bills  
19 were required.

20 Q Did you ever use the general power of attorney?

21 A No, sir.

22 Q When did Mrs. Dwyer retire from Putney, Twombly  
23 and Hall?

24 A I think it was 1953.

25 Q Did she at that time travel at all?



1 rdrf 2 Hall-cross

2 A A good deal, yes.

3 MR. MARTIN: May I have these marked? You can mark  
4 them M-1, 2, 3 and 4.

5 (Defendant's Exhibit M-1, 2, 3 and 4 marked  
6 for identification.)

7 Q I show you what are marked Defendant's Exhibits  
8 M-1 through 5 and ask you if you can tell us what they are?

9 A Yes. They are passports of Mrs. Dwyer.

10 Q And where did you first see these?

11 A I found them in her apartment in her desk.

12 Q And when was that?

13 A 240 Central Park South after her death.

14 MR. MARTIN: I would offer the passports.

15 THE COURT: Any objection to the passports?

16 MR. DUFFY: Except as to relevancy, your Honor.

17 THE COURT: Suppose they show she traveled a lot  
18 and presumably spent money.

19 MR. MARTIN: Also the question put to Mr. Hall  
20 dealt with his having the power of attorney and the circum-  
21 stances he said he was given that was because she traveled  
22 a good deal.

23 MR. DUFFY: I would have no objection, your Honor.  
24 If they are being offered for the purpose of showing what  
25 money she spent, we do have some records that the Court

1 rdrf 3

Hall-cross

2 declined to admit earlier that do touch on what monies she  
3 spent. I think that those records would be better evidence.

4 THE COURT: I said you could admit them if you  
5 produce somebody who can tell me what they mean. I will  
6 not pore over records in a desultory fashion and try to  
7 figure out what they mean.

8 MR. DUFFY: I think they are obvious from their  
9 face.

10 THE COURT: If they are obvious, just say what  
11 the prove and I will stipulate to them.

12 Received.

13 (Defendant's Exhibits M-1 through M-5 received  
14 in evidence.)

15 Q were asked yesterday about the size of your  
16 father's estate and how much you had inherited from your  
17 mother. Have you had occasion overnight to check the  
18 records of your mother's estate?

19 A I have, Mr. Martin.

20 Q And what was the amount that you received from  
21 her estate?

22 A The amount that I received from mother's estate  
23 was \$85,000 and not \$150.

24 Q What was the total value of her estate?

25 A Including distributions it was -- the total of



1 rdrf 4

Hall-cross

2 the distributions was three times 85, which would be  
3 \$255,000. Her estate for federal estate tax purposes was  
4 only \$228,000.

5 Q You were asked yesterday about a loan that had  
6 been made of some 14 odd thousand dollars by you from  
7 Mrs. Dwyer. What ultimately happened with that loan? Was  
8 it repaid?

9 A Yes, it was all repaid.

10 Q Was the interest also paid?

11 A Excuse me?

12 Q Was the interest also paid?

13 A The interest was also paid.

14 Q You were asked yesterday by Mr. Duffy concerning  
15 some change that had been made on the 1966 will -- could  
16 I mark this L-1, please? I would like to mark this L-1.

17 (Defendant's Exhibit L-2 marked for  
18 identification.)

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Hall-cross

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1 jgal  
2 Q I show what has been marked as Defendant's  
3 Exhibit L-1 for identification. Can you tell us what  
4 that is?

5 A This is a carbon copy of a will which Helen  
6 Dwyer executed in 1966.

7 Q And does that will, that carbon, have some  
8 writing on it?

9 A Yes, it does.

10 Q And would you point out to the court, is any  
11 of the writing that appears thereon the writing of  
12 Helen Dwyer?

13 A Yes. In Article Fourth the word "Plainfield"  
14 above the word "Lafayette," which is stricken out, is  
15 in her handwriting; the word "out" opposite "Article  
16 Fifth" is in her handwriting; the word "ten" above the  
17 word "five" stricken out in Article Fifth is in her  
18 handwriting; the word "ten" above the word "five" stricken  
19 out in Article Sixth is in her handwriting; and the word  
20 "out" opposite "Article Eighth" is in her handwriting.

21 That's all I see in her handwriting.

22 Q Would you tell the court what was the occa-  
23 sion for Mrs. Dwyer to make these notations on the copy  
24 of the 1966 will?

25 A This was when she asked me to have the will



jga2

Hall-cross

201

1 amended, or revised, for 1970, I believe it was.

2  
3 There is one other item, I believe, that  
4 is in her handwriting, and that is a "u" over the letter  
5 "i" in the word Milliken in paragraph Seventh, though I'm  
6 not sure.

7 Q Now, you said that this was in connection  
8 with an amendment of the will that she wanted to make  
9 in 1970. Was such an amended will ever signed by Mrs.  
10 Dwyer?

11 A No, sir. That was the one that I went up  
12 to Mr. Whipple, I believe.

13 Q An why was that not signed? Do you know?

14 A Well, the original was sent back to be signed,  
15 but she died before it could be signed.

16 MR. MARTIN: Your Honor, I would offer  
17 Exhibit L-1 for identification into evidence.

18 MR. DUFFY: Your Honor, this appears to  
19 be other handwriting on this document. I would just  
20 like to inquire as to what this or handwriting is before  
21 I press any comments.

22 VOIR DIRE EXAMINATION

23 BY MR. DUFFY:

24 Q Mr. Hall, you have identified the writing  
25 in paragraph Fourth as being Helen Dwyer's?

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Hall-cross

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A Yes.

3

Q And paragraph Fifth the same?

4

A The word "out."

5

Q The word "out" is Helen Dwyer's?

6

A Right.

7

Q Whose handwriting is this in paragraph

8

Sixth (indicating)?

9

A That is my handwriting, except for the word "ten" over the word "five" stricken.

10

11

Q And whose handwriting is this in paragraph

12

Seventh (indicating)?

13

A The same answer as for paragraph Fifth. It is mine, except the word "ten" over the word "five" stricken.

14

15

16

Q This word "out" next to paragraph Eighth, whose handwriting is that?

17

18

A Hers.

19

Q Now, in paragraph Ninth there is some handwriting; the word "Ninth" is stricken and the word "Seventh" is written over that.

20

21

22

A I believe that's mine.

23

24

Q And how about paragraph Tenth, which is stricken an "Eighth" is written over that?

25

A The same thing.



jga4

Hall-cross

203

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Q And this red pencil writing in paragraph Tenth (indicating)?

A That I don't recognize.

Q That is not your handwriting?

A That is not mine and I don't think it is hers.

Q And how about paragraph Eleventh, which is stricken, and over that is "Ninth"?

A That would be mine.

Q Now, in the right-hand margin, alongside the line that is stricken out, it used to read "Amherst College at Amherst, Massachusetts," there is some handwriting. Whose handwriting is that?

A That is mine.

THE COURT: What does it say?

Q Perhaps you can read that.

A It says "LHH, Jr. and AHM" -- that is myself and my younger sister -- "or their respective issue per stirpes."

Q That same statement appears about two or three inches below it, again in the right-hand margin. Is that your handwriting also?

A Yes, it is.

Q And in the left-hand margin is a circled a

jga5

Hall-cross

204

and a circled b.

A Yes. They are mine, I believe.

Q And again on page 3 of the will, alongside that same line, "Amherst College at Amherst, Massachusetts," appears this handwritten statement concerning issue per stirpes.

A That is mine.

Q And the c in the left-hand margin?

A I think it is mine.

Q I take it the balance of the handwriting on this page is yours also?

A I think it mostly consists of conforming to the original, I guess.

THE COURT: I take it this, then, is a carbon copy of her extant, her ultimate will, with revisions that she never made.

THE WITNESS: That is true.

MR. DUFFY: Your Honor, I am a little bit confused as to the purpose for which this is being offered.

THE COURT: Why don't you ask him?

MR. MARTIN: Very simply, your Honor, I thought there was some suggestion in Mr. Duffy's questioning yesterday that perhaps Mrs. Dwyer was being



jga6

Hall-cross

205

1 kept ignorant of the various provisions in her will, and  
2 the simple purpose of this is to show that she had reviewed  
3 that will and knew very well what was in it.  
4

5 MR. DUFFY: Except that I would note,  
6 your Honor, that all the provisions relating to the  
7 property that passed to the Hall family appeared to  
8 be changed in Mr. Hall's handwriting.

9 THE COURT: That seems to be argument.  
10 It doesn't make it inadmissible.

11 MR. DUFFY: All right.

12 THE COURT: Received.

13 (Defendant's Exhibit L-1 for identification  
14 was received in evidence.)

15 MR. DUFFY: I object to its relevance, of  
16 course, your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. MARTIN:

19 Q You told us, Mr. Hall, that Mrs. Dwyer re-  
20 tired from the firm of Putney, Twombly & Hall in 1953.  
21 Did she get any pension from that firm?

22 A Yes. We paid her a year's salary over the  
23 two years. We have no pension plan of the firm as  
24 such. That was the way we provided for long-time  
25 employees.

jga7

Hall-cross

206

Q So that after 1595, approximately, she received no further compensation from Putney, Twombley & Hall, is that right?

A Absolutely correct.

Q And did she continue to live in the same apartment on Central Park South thereafter?

A Yes, sir, she did.

MR. MARTIN: I have nothing further, your Honor.



T2B  
B1

Hall-redirect

207

XXX

1 jgjp 1

2 REDIRECT EXAMINATION

3 BY MR. DUFFY:

4 Q Mr. Hall, yesterday you testified--

5 THE COURT: Do you happen to know why Stella  
6 Marie Davis was cut out?

7 THE WITNESS: She was dead.

8 THE COURT: What about Sarah Verdi? Was she  
9 also dead?

10 THE WITNESS: No. She was alive. But Helen  
11 had already given her some money and she wanted to take  
12 her out of the latest will.

13 THE COURT: Do you happen to remember where  
14 she got the idea of Amherst?

15 THE WITNESS: My father went to Amherst. He  
16 was a loyal Amherst rater and I was, too.

17 THE COURT: Where did she get the idea of  
18 Amherst, though?

19 THE WITNESS: She volunteered it. She wanted  
20 to do it in memory of my father.

21 THE COURT: But why did she want to take it out  
22 in the end?

23 THE WITNESS: This was because she had provided  
24 for Amherst--no. It is in paragraph ninth, your Honor  
25 (indicating).

jgjp 2

Hall-redirect

208

1  
2 THE COURT: Why did she reduce it? Why did she  
3 eliminate the residuary for Amherst?

4 THE WITNESS: Because by this time all three of  
5 us children had children of our own and the likelihood of  
6 their going to Amherst, which was really a catch-all, in  
7 case any of us children died not leaving issue, in her  
8 earlier wills.

9 THE COURT: Did you ever discuss with her why  
10 she was so adamant that none of her own relatives could get  
11 it under any circumstances?

12 THE WITNESS: No, sir, I really didn't. She  
13 didn't put it that way to me.

14 THE COURT: The way you expressed it to me just  
15 now, the catch-all in case one of you died without issue,  
16 sounds to me as though for some reason she was dead set  
17 against her own relatives getting it under any circumstances.  
18 I wonder why she never expressed that to you.

19 THE WITNESS: She just did not express that.  
20 She did discuss the ones which were named there, and those  
21 were the ones with whom she had been brought up and lived  
22 with.

23 BY MR. DUFFY:

24 Q Mr. Hall, yesterday, on examination by your  
25 counsel, and just a moment ago, on examination by Judge



jgjp 3

Hall-redirect

209

Knapp, you testified to discussions that you had with Helen Dwyer. More specifically, can you tell me when these discussions that you just mentioned to Judge Knaapp occurred and what Helen Dwyer said to you and what you said to her in response?

A No. I think I've told everything that I can recall.

Q Is that your best recollection of those discussions?

A Yes. I recall that any such discussion would have occurred at the time of or before changes were made in the wills. But the exact timing or place I do not recall.

Q Do you recall anything about Helen Dwyer or what she might have looked like at the time, what she was wearing, whether it was summer, whether it was winter?

A No, I don't. I don't even remember what I was wearing.

Q Mr. Hall, have you ever seen William Graupner write?

A (No response.)

Q William Graupner.

A Do what?

Q Have you ever seen him write?

jgjp 4

Hall-redirect

210

1           A     Write. I can't recall having seen him write.  
2  
3     I may have.

4           Q     Would you be able to recognize his signature,  
5     if you saw it?

6           A     I'm not sure that I would.

7           THE COURT: That is the father of the next  
8     witness?

9           MR. DUFFY: Yes.

10          THE COURT: I assume he can recognize his  
11     father's handwriting.

12          Q     Let me show you this letter and ask you--

13          A     I cannot identify it. I can't deny that it  
14     is his either.

15          THE COURT: You can't deny what?

16          THE WITNESS: That it is his either.

17          THE COURT: You neither affirm nor deny it.

18          THE WITNESS: That's right.

19          MR. DUFFY: Your Honor, I am going to offer  
20     this at this point subject to complete authentication by  
21     Mr. Graupner.

22          THE COURT: You have no authentication at all  
23     in the testimony.

24          MR. DUFFY: I represent to the Court that Mr.  
25     Graupner will testify that he typed this letter for his



1 39jp 5

Hall-redirect

211

2 father.

3 MR. MARTIN: Your Honor, I object to it at this  
4 point until Mr. Graupner is here to tell us about it, and  
5 I also object to its relevance in any event.

6 THE COURT: I don't know whether it is rele-  
7 vant.

8 Why do you want to offer it now?

9 MR. DUFFY: Because I wanted to ask Mr. Hall  
10 about some discussions that are alluded to in this letter.  
11 The copy on the front is the translation.

12 THE COURT: Who is Mrs. Amelia Krause Otto?

13 MR. DUFFY: That was one of Mr. Schmieder's  
14 contacts. The pattern that was followed on occasion was  
15 that Mr. Graupner would write Mrs. Otto or someone else  
16 and they would deliver the letter to Mr. Schmieder.

17 THE COURT: Mark it for identification. I'll  
18 let you question the witness about it, on your representa-  
19 tion.

20 MR. MARTIN: I just want the record to note  
21 that the statements Mr. Duffy made may or may not be fact.  
22 I certainly wouldn't stipulate to them. I think we should  
23 have somebody to testify to them.

24 THE COURT: He represents that that's what the  
25 next witness will say. If he doesn't say it, we'll not

jgjp 6

Hall-redirect

212

1 receive it.

2  
3 (Plaintiff's Exhibit 34 was marked for iden-  
4 tification.)

5 Q Mr. Hall, you note that in paragraph 3 of that  
6 letter Mr. Graupner writes to the effect that his son  
7 Herman and you have been kept advised or are advised.

8 A Is informed.

9 Q Is informed. Did you have any discussions with  
10 William Graupner at or about that time?

11 A None that I know of. March 24, 1953?

12 Q That letter appears to refer to a settlement.

13 MR. MARTIN: Your Honor, I object. He said  
14 he didn't have any conversation.

15 THE COURT: He is not bound by the witness'  
16 answer, for heaven's sake. He is trying to probe it.

17 MR. MARTIN: He is asking about a letter--

18 THE COURT: The letter on its face suggests  
19 this man had conversations with the writer, and he is try-  
20 ing to refresh his recollection about it.

21 Q Would that settlement or matter have been satis-  
22 factorily concluded, depending on how you wished to trans-  
23 late it? Would that be the settlement Mrs. Dwyer made  
24 with the Government approximately a year and a half, two  
25 years earlier?



1 jgjp 7

Hall-redirect

213

2 A I have absolutely no way of knowing that it  
3 refers to, Mr. Duffy.

4 Q Mr. Hall, do you recognize the signature on  
5 that letter?

6 A Yes. That is the signature of Herman Graupner.

7 Q I note that that letter refers to a discussion  
8 that you had with Mr. Graupner.

9 A It says that he discussed Mr. Schmieder's  
10 letter of December 10, '56 with me or my father--or me.  
11 My father was dead.

12 Q Do you recall that discussion?

13 A Not as such, no. I don't remember a discussion  
14 and I don't know what this letter is. I discussed several  
15 letters that Mr. Graupner received from Mr. Schmieder with  
16 him, with Mr. Graupner. But I don't remember any particular  
17 discussion, and especially this one.

18 THE COURT: You had better mark it.

19 MR. DUFFY: Mark this for identification, please,  
20 and mark this one also.

21 (Defendant's Exhibits 35 and 36 were marked  
22 for identification.)  
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rdsjp 1

Hall-redirect

214

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Q Mr. Hall, I show you Plaintiff's Exhibit 36 for identification. Is that a letter from Herman Graupner?

3

4

A This looks like Herman Graupner's signature.

5

Q And it is addressed to Kurt Schmieder; is that correct?

6

7

A Yes, it is.

8

Q So that you apparently had with Mr. Graupner.

9

10

11

This would be approximately what, three months subsequent to the discussion referred to in Exhibit 35 for identification? Do you recall what occurred during that discussion?

12

13

14

15

A I don't recall, as I said before, what occurred during this particular discussion. Although I had a number of discussions with Mr. Graupner in connection with correspondence that he received from Mr. Schmieder.

16

17

Q Can you tell me what was generally the tenor of these discussions?

18

19

20

21

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A Yes. He would first tell me what the letter meant by translating it and we would both ask each other what on earth Mr. Schmieder was doing trying to pry into the affairs of Helen Dwyer because he felt that it was not his concern. And we worked on a reply for Mr. Graupner to give to Mr. Schmieder indicating it was none of his concern. That is the general tenor of the discussions that I can remember.



MR. MARTIN: I want to interpose an objection to the relevance of this whole line.

THE COURT: Overruled.

Q Mr. Hall, where would these replies be prepared?

A I believe that Mr. Graupner would prepare them,  
but I do not know.

Q Did Mr. Graupner ever express the opinion or belief to you that Kurt Schmieder was the owner, the beneficial owner of the assets of the Stoneleigh Corporation?

A No, I don't believe Mr. Graupner ever expressed that.

Q Did you ever have any discussions with Mr. Graupner on that subject?

A I don't recall any on the subject of Mr. Schmieder's ownership of the Stoneleigh assets.

Q Did you ever have any discussions with Mr. Graupner, Sr., William Graupner, concerning that subject?

A      No, sir. I'm not sure.

MR. DUFFY: I have no further questions.

THE COURT: What is Mr. Schmieder's letter of February 21st? Have you got that?

MR. DUFFY: I have a quantity of letters here.

What was the year, your Honor?

rdsjp 3

Hall-redirect

216

1 THE COURT: February 21, 1957.

2 (Pause.)

3 MR. DUFFY: That does not appear to be on the  
4 list of letters that I'm aware of or which I have copies  
5 of. Mr. Turchin might have more copies since these docu-  
6 ments originally came from him on an examination.

7 MR. MARTIN: There is a letter in the files,  
8 your Honor, from Mr. Schmieder, apparently, to Mr. Graupner  
9 dated February 21, 1957.

10 THE COURT: May I see it?

11 MR. MARTIN: Yes.

12 MR. DUFFY: My apologies, your Honor. This  
13 appears to indicate I do have a copy of it, but I don't  
14 have it on my list.

15 (Pause.)

16 THE COURT: All right.

17 MR. MARTIN: Do you want to mark that for iden-  
18 tification so the record is clear, your Honor?

19 THE COURT: Do you want to mark it?

20 MR. DUFFY: I have no objection to marking it.

21 (Plaintiff's Exhibit 37 is marked for identi-  
22 fication.)

23 MR. DUFFY: Your Honor, I have no further  
24 questions of Mr. Hall.  
25



rdsjp 4

Hall-redirect/recross 217

THE COURT: Mr. Hall, you are going to be around, aren't you?

THE WITNESS: Yes, sir.

THE COURT: After Mr. Graupner testifies I might have a few questions which I would like to ask you.

MR. MARTIN: Let me perhaps ask one question.

RE CROSS EXAMINATION

BY MR. MARTIN:

Q After I finished my examination, Judge Knapp did ask you some questions about discussions with Mrs. Dwyer concerning the provisions of her will and whether she told you her reasons for certain things.

Would it be possible for you to give us the nature of your relationship with Mrs. Dwyer? Was she a person you would question about what she wanted to do?

A No. She was a very forceful person and a strong-willed person. She knew what she wanted. She understood wills. She had drawn a good many--not drawn them but typed them for my father and me, and she didn't need any instruction or guidance as to what she wanted to do.

That's all that I have in my mind.

THE COURT: In view of the fact that this money came to her out of the beneficence of your father, you might have made sure that she wasn't feeling under any

rdsjp 5

Hall-recross

218

1 obligation to return it to your family when you did all these  
2 wills.  
3

4 THE WITNESS: She had expressed herself as to  
5 her affection for the family, your Honor. It is a difficult  
6 thing. If somebody likes you and wants to leave something  
7 to you, it is embarrassing.

8 THE COURT: I understand. Attorneys usually  
9 don't draw wills in those circumstances.

10 THE WITNESS: I wish I hadn't. I was one attor-  
11 ney that she knew and trusted.

12 THE COURT: All of this money came from your  
13 father's beneficence and it never occurred to you to re-  
14 assure her that she didn't have to repay that beneficence.

15 THE WITNESS: No, sir. I thought it was out of  
16 love and affection for me and my family.

17 THE COURT: It never troubled you in any way  
18 in talking to her?

19 THE WITNESS: No, it did not. I felt that this  
20 was her money.

21 You say it was my father's beneficence. It  
22 was Mr. Graupner and my father who selected her, but they  
23 didn't provide the funds.

24 THE COURT: As far as she was concerned your  
25 father gave it to her, as far as she was concerned?



rdsjp 6

Hall-recross

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1 THE WITNESS: I'm not sure about that.

2 THE COURT: She must have known that Mr. Schmieder  
3 der or Mr. Graupner had never heard of her.

4 THE WITNESS: They steered it to her.

5 THE COURT: She might have felt under an obli-  
6 gation to do something.

7 THE WITNESS: She may have, your Honor.

8 THE COURT: But it didn't trouble you?

9 THE WITNESS: No, sir.

10 MR. MARTIN: I have nothing further, your Honor.

11 THE COURT: That is all.

12 (Witness excused.)

13 MR. DUFFY: Your Honor, at this point we would  
14 like to call Herman Graupner.

15 MR. MARTIN: He is in the witness room.

16 H E R M A N W. G R A U P N E R, called as a  
17 witness on behalf of the plaintiff, after being duly  
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DUFFY:

21 Q Mr. Graupner, I show you Plaintiff's Exhibit  
22 34 for identification, which is a translation, and an ori-  
23 ginal in the German text of a letter that purports to be  
24 signed by your father.  
25

rdsjp 7

Graupner-direct

220

Would you look at that, please, and tell us if that is your father's signature and if you have ever seen that letter before?

A It is my father's signature and I have seen it.

Q What was the occasion of your seeing it?

A I probably typed it.

Q Now, in prior testimony in November of 1970 you testified that you did as a fact type it.

A I don't think I testified in November of 1970.

THE COURT: He said he probably typed it.

MR. DUFFY: I just wanted to eliminate the uncertainty.

THE COURT: What difference does it make?

Q That letter refers to a settlement of some sort, does it not?

A Yes.

Q And what settlement was your father talking about?

A The problem with the Alien Property Custodian.

Q What specifically was he referring to?

A I don't know.

Q You say the problem was with the Alien Property Custodian. Apparently there were a lot of problems with



1 rdsjp 8

Graupner-direct

221

2 Alien Property Custodian.

3 A I don't know that.

4 Q The letter further indicates that your father  
5 informed you about this.

6 A He did.

7 Q And what did he inform you?

8 A He told me that the problem with the Alien  
9 Property Custodian had been concluded.

10 THE COURT: Is that all he said?

11 THE WITNESS: That's all.

12 THE COURT: He wrote a letter to Germany  
13 telling you the problem with the Alien Property Custodian  
14 was concluded and he thought it was worthwhile writing a  
15 letter to Germany to say that?

16 THE WITNESS: At that time that's what he told  
17 me, sir.

18 Q Now, he states here--

19 THE COURT: Why did he write a letter to  
20 Germany just to tell you the problem with the Alien Property  
21 Custodian was concluded if he didn't tell you what it was  
22 or anything about it?

23 THE WITNESS: I don't know, sir.

24 THE COURT: Did you ask him why are you writing  
25 a letter to Germany saying this when you haven't told me

1 rdsjp 9

Graupner-direct

222

2 anything?

3 THE WITNESS: No, sir. He gave me a handwritten--

4 THE COURT: You just typed it?

5 THE WITNESS: Yes.

6 THE COURT: Didn't you wonder why he was doing  
7 it?

8 THE WITNESS: No, sir.

9 THE COURT: Don't you and Mr. Hall ever talk  
10 to your fathers?

11 THE WITNESS: Yes, I talked to my father when  
12 he talked to me.

13 THE COURT: Oh, you are a good child, you speak  
14 when you are spoken to and otherwise you say nothing?

15 THE WITNESS: Yes, sir.

16 Q Mr. Graupner, how old were you at the time you  
17 typed this letter for your father?

18 A I don't know what date it was. I was born in  
19 1906.

20 Q It says 24 Maerz, 1953.

21 A That's the 24th of March, 1953.

22 Q So you would have at that point been approxi-  
23 mately 40 years old?

24 A Somewhere in that area.

25 Q Now, Mr. Graupner, are you a college graduate?



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Graupner-direct

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A I am.

Q Did you attend any formal institutions of learning subsequent to college?

A I did.

Q What was the name of the institution or institutions that you attended subsequent to college?

A The University of Virginia Law School.

Q Are you a member of any Bar?

A I passed the Bar examination in Virginia.

Q So you are an admitted attorney in the State of Virginia?

A I would imagine so.

THE COURT: Although you don't practice?

THE WITNESS: No, sir.

Q Now, did you engage in an exchange of correspondence with Kurt Schmieder?

A He wrote me letters and I answered them.

Q And what were the circumstances of his writing you letters?

A I don't understand. He wrote me letters and I answered them.

THE COURT: What were the circumstances? Answer that question now, for heaven's sake. Did he write you about tennis or golf?

1 rdsjp

2 THE WITNESS: No. He asked me about Mr.

3 Schmieder and had I seen him.

4 THE COURT: That's the answer to the question.

5 Now stop fencing.

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1 rdrf 3b am 1

Graupner-direct

2 Q Now, what would Mr. Schmieder usually write  
3 about when he would write you letters?

4 A He asked me whether I was coming to Europe on  
5 some occasions. I would answer that I either was or wasn't.

6 He asked me whether I had seen Mrs. Dwyer. I  
7 said I hadn't. He asked me if I knew where Mrs. Dwyer lived.  
8 I told him I didn't. He asked me to discuss certain things  
9 with Mr. Hall, Jr. I did.

10 Q Now, were you ever asked directly by Mr. Schmieder  
11 as to whether you could help him locate Helen B. Dwyer?

12 A In one of his letters he asked that, yes.

13 Q And what was your response to that, if you recall?

14 A I probably said I didn't know where she was.

15 Q Now, you would be in rather frequent contact  
16 with Mr. Hall; isn't that correct?

17 A I saw him from time to time.

18 Q And certainly Mr. Hall knew how to reach Helen  
19 Dwyer.

20 A I would imagine he did.

21 Q Why didn't you ask Mr. Hall where Helen Dwyer  
22 was?

23 A I just didn't.

24 THE COURT: He asked you why.

25 THE WITNESS: It was none of my business where

1 rdrf 2

Graupner-direct

2 Mrs. Dwyer was.

3 THE COURT: That is your answer then.

4 Was this after she had retired from the firm?

5 THE WITNESS: Yes, sir.

6 Q Mr. Graupner, you were president of Stoneleigh  
7 Corporation and one of its directors; is that true?

8 A I was.

9 Q And we have introduced into evidence an affidavit  
10 from Louis Hall, Sr. that states to the effect that he was  
11 the one who wanted you to be president since your father  
12 was the contact and he wanted someone associated with your  
13 father to be in charge of the corporation.

14 Did you have any discussions with your father  
15 concerning that subject?

16 A My father told me there was a corporation to be  
17 formed and that I was to be president.

18 Q Did you have any discussions with Louis Hall,  
19 Sr. concerning that subject?

20 A I don't recall any.

21 Q Now, did your father tell you the purposes for  
22 which that corporation was to be formed?

23 A To hold the assets of Mrs. Bochman.

24 Q Now, did your father tell you anything about  
25 the nature of Mrs. Bochman's ownership of those assets?



1 rdrf 3 Graupner-direct

2 A No.

3 Q Do you have any information concerning the nature  
4 of Mrs. Bochman's ownership of those assets?

5 A I have no present recollection of any.

6 Q Do you recall your being present in New York City  
7 on October 28, 1971?

8 A I do.

9 Q That was the occasion of an examination of you  
10 before trial in the other proceedings?

11 A What was the date?

12 Q October 28, '71.

13 A No.

14 MR. DUFFY: I would like to mark this for  
15 identification.

16 (Plaintiff's Exhibit 19-A is marked for  
17 identification.)

18 Q Mr. Graupner, would you refer to the first page  
19 of 19-A.

20 A Yes, I see the date October 28, 1971.

21 Q Does that refresh your recollection?

22 A No, it doesn't because I was present at an  
23 examination before trial but it was either in July or August  
24 because it was a very, very hot day and I came up from  
25 Cape May where I spend my summers. In October I would have

1 rdrf 4 Graupner-direct

2 been in New York, so I wouldn't have had to come up from  
3 Cape May.

4 THE COURT: Anyway, the date is immaterial.

5 THE WITNESS: I was present at an examination but  
6 it wasn't in October.

7 Q Now, at page 27 of that transcript, starting with  
8 line 3 -- it won't be necessary for you to read it for the  
9 moment -- I asked you the following question:

10 "Q Do you recall telling me at that time that Jenny  
11 Bochman held the shares of Stoneleigh Corporation as Mr.  
12 Schmieder's nominee? "

13 Do you recall what your answer to that question was?

14 A I said yes.

15 Q Your answer was yes?

16 A I imagine it was.

17 Q Well, your answer in fact was, "I don't recall it  
18 but it is a fact."

19 My next question to you was:

20 "Q Is it a fact that Jenny Bochman held the shares of  
21 Stoneleigh Corporation as Mr. Schmieder's nominee?"

22 Would you recall what your answer was?

23 A Probably the same answer.

24 Q You say, "To my knowledge."

25 Now, the beneficial owner of Stoneleigh Corporation's  
assets would write you from time to time and inquire about



1           rdrf 5                               Graupner-direct

2           those assets, would he not?

3           A       Mr. Schmieder wrote and inquired about those assets.

4           THE COURT: I'm not clear. Was Schmieder the  
5           beneficial owner or wasn't he?

6           THE WITNESS: I was told he was, yes.

7           THE COURT: By whom?

8           THE WITNESS: My father.

9           THE COURT: When?

10          THE WITNESS: I couldn't recall.

11          THE COURT: When did your father die?

12          THE WITNESS: '54.

13          THE COURT: So it was before '54?

14          THE WITNESS: Yes, sir.

15          THE COURT: Were you told by your father at or  
16          about this time, I mean at about the time the corporation  
17          was formed?

18          THE WITNESS: I can't say it was at that time.  
19          Sometime he told me that.

20          THE COURT: When? What was the occasion of his  
21          telling you?

22          THE WITNESS: Sometime when I was up at his  
23          residence.

24          MR. DUFFY: Mark this for identification, please.  
25          (Plaintiff's Exhibit 38 marked for

1 rdrf 6 Graupner-direct

2 identification.)

3 Q Mr. Graupner, you as president of Stoneleigh  
4 Corporation knew what happened to its assets on its  
5 dissolution; is that correct?

6 A A gift was made to Mrs. Dwyer.

7 Q The assets of Stoneleigh Corporation on its  
8 dissolution went to Mrs. Dwyer?

9 A So I understand.

10 Q Didn't you sign the papers? Didn't you participate  
11 in the meeting?

12 A Yes.

13 Q And you also understood sometime prior to your  
14 father's death that Kurt Schmieder was the beneficial owner  
15 of the shares of Stoneleigh Corporation; is that correct?

16 A Yes.

17 THE COURT: At the time of this transfer you  
18 must have known that Schmieder was the beneficial owner.

19 THE WITNESS: Yes.

20 THE COURT: At the time of the transfer to Mrs.  
21 Dwyer you must have known it.

22 THE WITNESS: Yes.

23 THE COURT: And Mr. Hall must have known it.

24 THE WITNESS: I don't know if he knew it. I knew  
25 it.



1 rdrf 7

Graupner-direct

2 THE COURT: You didn't keep it a secret, did you?

3 THE WITNESS: No.

4 THE COURT: Wasn't that the purpose of the discuss-  
5 ion? The fact that Mr. Schmieder was the beneficial owner  
6 was the sole reason for giving it to Mrs. Dwyer?

7 THE WITNESS: Yes, as I understand.

8 THE COURT: Didn't everybody that was doing it  
9 know why they were doing it?

10 THE WITNESS: I would imagine so, sir. I knew  
11 it.

12 THE COURT: That is the way it would seem to me,  
13 too. Mr. Hall says here on the stand, he said he didn't  
14 know why he was doing it.

15 Is there any reason that you can think of why  
16 he wouldn't have known why he was transferring that to  
17 Mrs. Dwyer? Was there any other reason why on God's  
18 earth that it was transferred?

19 THE WITNESS: Except he wanted to get rid of it.

20 THE COURT: Not because she didn't want it but  
21 it was Schmieder.

22 THE WITNESS: Yes.

23 THE COURT: Hall sat in that chair and says he  
24 didn't know that. Can you conceive he was telling the  
25 truth when he said that?

1 rdrf 8

Graupner-direct

2 THE WITNESS: I don't know.

3 THE COURT: Well, I can't.

4 Q I show you Plaintiff's Exhibit 38 for identification  
5 and I direct your attention to the last paragraph of that  
6 letter.

7 A Yes.

8 Q It appears to indicate that you would make an  
9 effort to communicate with Mrs. Dwyer.

10 A I said I would make an effort to have your  
11 letter delivered to her.

12 Q Did you do that?

13 A I must have. I can't recall but I said so, that  
14 I would do it.

15 Q Mr. Graupner isn't it true that every time you  
16 got a letter from Kurt Schmieder, you got together with  
17 Mr. Hall and you discussed it?

18 A He asked me to, Mr. Schmieder in most of the letters  
19 asked me to have a discussion with Mr. Hall and I did.

20 Q Isn't it true that Mr. Hall didn't want any  
21 contact with Helen Dwyer?

22 A That he didn't want any?

23 Q Mr. Hall didn't want Mr. Schmieder to have any  
24 contact with Helen Dwyer?

25 A I don't know.



1 rdrf 9

Graupner-direct

2 THE COURT: Did he tell you that?

3 THE WITNESS: I didn't ask him. I just said,

4 "Here are these letters I have gotten from Mr. Schmieder.  
5 Help me answer them."

6 THE COURT: How did he react? What was your  
7 impression from his reaction?

8 THE COURT: How did he react? What was your  
9 impression from his reaction?

10 THE WITNESS: My impression was he didn't want to  
11 bother Mrs. Dwyer.

12 THE COURT: That is what he asked. Why didn't  
13 you answer it.

14 MR. DUFFY: Your Honor, I would offer 34,  
15 35, 36, 37, 19-A and 38 which are now all marked for  
16 identification.

17 THE COURT: What are these?

18 MR. MARTIN: These are the letters that had  
19 been identified. Mr. Hall had been questioned about these  
20 letters and I take it now Mr. Graupner has identified  
21 them.

22 THE COURT: Any objection?

23 MR. MARTIN: To their relevance and their  
24 hearsay nature.

25 My objection to the transcript, I don't see any

1 rdrf 10 Graupner-direct  
2 need for the transcript.

3 MR. DUFFY: I withdraw the offer on the  
4 transcript. But as to the balance I would like them admitted.

5 THE COURT: These are the exchange of correspondence  
6 with Schmieder.

7 (Plaintiff's Exhibits 34, 35, 36, 37 and 38  
8 received in evidence.)

9 MR. DUFFY: I have no further questions, your  
10 Honor.

11 CROSS EXAMINATION

12 BY MR. MARTIN:

13 Q Mr. Graupner, you were asked about Stoneleigh  
14 Corporation and your involvement with it. I show you what  
15 is marked as Exhibit 7-G. I ask you if you would look at that  
16 and first tell the Court what that is.

17 A Well, these were some records for the beginning  
18 part my father kept, in the latter part I kept about  
19 Stoneleigh.

20 Q Are those the financial records of Stoneleigh  
21 Corporation?

22 A Yes.

23 Q And you say those were records kept by you and  
24 your father; is that correct?

25 A That's right. Up to a certain point I kept them,



473a

1       rdrf 11

          Graupner-cross

2       and them he apparently turned them over to me to continue  
3       on the work.

4               Q     Did Louis Hall, Jr. have anything to do with the  
5       day to day affairs of Stoneleigh Corporation?

6               A     Not to my recollection.

7               Q     Was that handled by you and your father?

8               A     That is right.

9               Q     The decisions as to what investments Stoneleigh  
10       Corporation was making, the instructions on those, did they  
11       come from you or your father?

12              A     From my father.

13              Q     The time the Judge asked you about whether your  
14       father told you of Schmieder's interest in this property,  
15       did your father tell you anything about why a gift of  
16       this property was being made to Mrs. Bochman -- to Mrs.  
17       Dwyer?

18              A     Yes. Mr. Schmider was under some pressure from  
19       the then German Government and he wanted to get rid of it.

20              Q     Did he tell you at that time that an agreement  
21       had been made that at some point in the future that property  
22       would be returned to Mr. Schmieder or his family?

23              A     At no time.

24              Q     Did he ever tell you that?

25              A     At no time.

1 rdrf 12

Graupner-cross

2 MR. MARTIN: May I have this marked as  
3 Defendant's Exhibit D, please.

4 (Defendant's Exhibit D marked for  
5 identification.)

6 Q Before we pass on Stoneleigh Corporation, did  
7 you at any time in 1938 or before that tell Mr. Louis Hall,  
8 Jr. that the property in Stoneleigh Corporation belonged  
9 to Mr. Schmieder?

10 A Not to my recollection.

11 THE COURT: Let me get to the bottom of this.  
12 How much money was involved?

13 THE WITNESS: I don't know, sir. I don't  
14 remember.

15 THE COURT: What is that check?

16 THE WITNESS: \$101.35.

17 THE COURT: How much money was it?

18 MR. MARTIN: About \$130 in it transferred.

19 THE COURT: \$130,000 was being transferred to Mrs.  
20 Dwyer. I don't know where I got the information, I got it  
21 from Mr. Martin orally but where he got it from I don't  
22 know. As I understand it, Mrs. Bochman was a Swiss  
23 citizen; right?

24 THE WITNESS: I believe so. I don't know whether  
25 she was or wasn't but that is where she lived.



1 rdrf 13

Graupner-cross

2 THE COURT: And she was holding this property  
3 as a nominee for her brother.

4 THE WITNESS: Her brother-in-law.

5 THE COURT: And she was afraid because she had  
6 a son in Germany, that she was endangering the son by  
7 continuing to be a nominee for the brother; is that correct?

8 THE WITNESS: Yes.

9 THE COURT: Where did you get that information  
10 from?

11 THE WITNESS: From my father.

12 THE COURT: Therefore, she said that she had to  
13 give the money to somebody; is that correct?

14 THE WITNESS: That is correct.

15 THE COURT: You understood that?

16 THE WITNESS: Yes.

17 THE COURT: And then she was trying to figure out  
18 whether she could give it to someone and have some strings  
19 attached to it; right?

20 THE WITNESS: No, sir, I don't know that. I never  
21 heard anything like that. She wanted to get rid of it.

22 THE COURT: Didn't she first inquire as to whether  
23 she could get rid of it and still keep a string on it.

24 THE WITNESS: I wasn't told any such thing.

25 THE COURT: You were told she wanted to get rid of

1 rdrf 14 Graupner-cross

2 it?

3 THE WITNESS: Yes, sir.

4 THE COURT: She didn't know who to give it to?

5 THE WITNESS: All I know is she wanted to get  
6 rid of it. I don't know anything about who or by -- I mean  
7 who she was going to give it to, whether it was to go to  
8 this one, that one or the next one.

9 THE COURT: How did Mrs. Dwyer get into the act?

10 THE WITNESS: I don't know. I was never told.

11 THE COURT: But you knew she had to get rid of it  
12 to protect her brother?

13 THE WITNESS: I was told she had to get rid of  
14 the property.

15 THE COURT: Who did you discuss this with?

16 THE WITNESS: My father told me that, and so I  
17 said, you know, she has to get rid of it. It didn't  
18 concern me one way or another.

19 THE COURT: What was your relationship with Mr.  
20 Hall, Jr. at that time?

21 THE WITNESS: Our fathers were friends. I would  
22 occasionally play squash with him, that sort of thing.

23 THE COURT: Here was \$100,000 being given away  
24 and you never talked to him about it.

25 THE WITNESS: No.



1 rdrf 15

Graupner-cross

2 THE COURT: You expect me to believe it?

3 THE WITNESS: Sir, I tell you what I know.

4 THE COURT: Have you ever in your life been  
5 involved with giving \$100,000 away for no purpose except  
6 to get rid of it?

7 THE WITNESS: No, sir, not I.

8 THE COURT: Have you ever heard of it happening  
9 to anybody else?

10 THE WITNESS: No, sir.

11 THE COURT: And yet here was this friend of  
12 yourse and you never mentioned to him how -- you never  
13 said this is an extraordinary thing, I wonder why they are  
14 doing it; anything like that?

15 THE WITNESS: I took my father's word. My father  
16 told me it had to be gotten rid of.

17 THE COURT: It didn't even surprise you enough to  
18 cause a conversation?

19 THE WITNESS: No, sir, it didn't.

20 THE COURT: You expect me to believe that?

21 MR. MARTIN: I see no reason for this man to  
22 lie.

23 THE COURT: Then you and I are not on the same wave-  
24 length.  
25

t4a

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jga

Graupner-cross

239

2

BY MR. MARTIN:

3

Q Did you have any discussions with Mr. Schmieder?

4

5

A I had, on two occasions in Munich.

6

Q And when did they occur?

7

A One in the late '50s, one in the early '60s.

8

Probably in '56 or --

9

Q Did you have any discussion with him about this transaction prior to 1940?

10

11

A Did I have a discussion with him prior to 1940? No.

12

13

Q Did you meet him?

14

A Well, I met him in the early '20s at one time or in the late '20s, just to say hello, and then I left.

15

16

Q Did you carry on any correspondence with Mr. Schmieder during the period that you met him in the mid or late '20s until 1940?

17

18

A None at all, none except these letters here.

19

20

Q Would you tell us something about your dad? Was your father the type of man that you would question about his affairs?

21

22

23

A No, sir. I wouldn't question him. I



1 jga2 Graupner-cross

2 just wouldn't do that.

3 Q I show you what has been marked Defendant's  
4 Exhibit D and ask you if you can identify the signature  
5 on that.

6 A My father's signature.

7 MR. MARTIN: Your Honor, I would offer  
8 Defendant's Exhibit D for identification into evidence.

9 MR. DUFFY: Just one question, if I might.  
10 Did you notice the signature on this document?  
11 Did you see the signature on this document?

12 THE WITNESS: Just right now I saw it.  
13 That is my father's signature.

14 MR. DUFFY: All right. No objection.

15 MR. MARTIN: Your Honor, I would offer that  
16 document into evidence.

17 THE COURT: No objection. Received.

18 (Defendant's Exhibit D for identification  
19 was received in evidence.)

20 BY MR. MARTIN:

21 Q You were asked by Mr. Duffy about a letter  
22 that you had typed for your father. Did you type more  
23 than one letter for your father in the course of his  
24 lifetime?

25 A Yes, I did.

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Graubner-cross

241

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Q And how often would this occur?

A I can't really say. Every now and then I would come up here and he would say, "Here's a letter. Would you please type it up for me?" He would have it written out in longhand. I would use the type-writer and type it for him.

Q Did you discuss these letters with him?

A No. I just did what he asked me to.

Q And these were all prepared prior to the time you arrived, is that right?

A As far as I can remember, yes.

THE COURT: I didn't get the question.

MR. MARTIN: I said these were all written out before he had arrived, and he said yes.

THE WITNESS: He would have it on a piece of paper with his handwriting and say, "Type this out."

Q You were shown Exhibit 37, which is a letter to you from Mr. Schmieder. I would like you to look at a paragraph that reads:

"Since your father was formerly precisely informed with regard to the". . . "account and since it stood under the protection of Mr. Hall, Sr." -- do you see that?

A I do.



jq44

Graupner-cross

242

Q Would you look back at the original German text of that portion? Do you find that?

A I do.

Q Who made the translation that appears on the top there?

A I did.

Q Would you look now at the German text and translate that from the German text for us?

A "Since your father was formerly knowledgeable, was completely knowledgeable, and since the matters about the account DW, and since it stood under your father's protection, therefore I believe that also Mr. Hall, Jr. and you also knew about this deposit, or this account."

Q The reference here to Mr. Hall -- is that Mr. Hall, Sr.?

A Yes. Mr. Hall, Sr.

Q Just reading the part that says --

A And that it also stood under the protection of Mr. Hall, Sr.

Q Does one of those words mean "probably"?

A Probably or -- it could be translated as "probably."

Q That is the word "wohl"?

A Yes.

jga5

Graupner-cross

243

Q And it reads "it probably stood under the protection of Mr. Hall, Sr."?

A Right.

Q Mr. Graupner, your father died in 1954, is that correct?

A That's right.

Q And from the end of World War II -- first, where was your father living during World War II?

A Here in this country.

Q And from the end of World War II until his death in 1954 did your father ever return to Germany?

A No, he did not.

THE COURT: Was your father German at birth?

THE WITNESS: Yes, sir.

THE COURT: But you were born here?

THE WITNESS: I was.

THE COURT: You were born in Germany?

THE WITNESS: No. I was born here.

THE COURT: But you spoke German?

THE WITNESS: Yes. As a child I learned German. Since my mother passed away, I have nobody to talk German to any more.

MR. MARTIN: May I have just one moment,



1 jga6

Graupner-cross

2 your Honor, to check my records?

3 THE COURT: Certainly.

4 (Pause.)

5 Q I show you 35, which you identified. You  
6 say in that letter that in 1938 the entire stock owner-  
7 ship of Stoneleigh Corporation was given by Mrs.  
8 Bochman as an unconditional and irrevocable gift to Mrs.  
9 Dwyer.

10 Was that your understanding of the transac-  
11 tion?

12 A That's right.

13 MR. MARTIN: I have no further questions  
14 of the witness, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. DUFFY:

17 Q Mr. Graupner, did I understand you correctly  
18 when you testified before that you and your father were  
19 the individuals primarily responsible for handling  
20 the business affairs of Stoneleigh Corporation?

21 A My father -- I kept the records and he did  
22 the investing, if there was any.

23 THE COURT: He did the investing?

24 THE WITNESS: Yes. And he made the deci-  
25 sions. I never did.

jga7

Graupner-redirect

245

Q Mr. Graupner, I am referring to page 31 of the transcript of your examination, which was marked for identification as 19A. At line 19 I asked you the question, "Who was responsible for managing the securities portfolio that Stoneleigh Corporation owned?" Your answer was, "Investment counsel."

You continued to say, "I don't know who it was."

A little later on that same page I asked you if the name Green, Ellison & Anderson refreshed your recollection, and you said it does.

At page 30, line 22, I asked you:

"Q Did you ever receive instructions from Louis Hall, Jr. or Sr. as to how you should function as president of Stoneleigh Corporation?"

Do you remember what your answer was?

A I don't remember my answer.

Q Your answer was, "We discussed it. There were minutes to sign."

THE COURT: We discussed it -- what?

MR. DUFFY: "There were minutes to sign. I was called up and told, "There is something for your signature," or something had to be done, that sort of thing.



T4B  
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485a

Graupner-redirect

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1 jgjp 1

2 Q Now, if you will refer to the exhibits in your  
3 lap, do you refresh your recollection as to whether you  
4 signed all the checks in Stoneleigh Corporation or did  
5 someone else sign checks as well?

6 A I signed one here, check number 1, for \$101.35  
7 to the Collector of Internal Revenue. The date is June 3,  
8 1936.

9 Q Immediately below that is another check.

10 A Right.

11 Q Who signed that check?

12 A Mr. Hall, Jr.

13 THE COURT: He was treasurer, wasn't he?

14 MR. DUFFY: Yes, he was.

15 Q I see there is another check, check number 9,  
16 signed by Mr. Hall. Certainly Mr. Hall had some involve-  
17 ment in the management of the day-to-day affairs of Stone-  
18 leigh Corporation, didn't he?

19 A Well, he signed some checks.

20 Q You said before that Schmieder was under some  
21 pressure to give his property away. Do you know what that  
22 pressure was?

23 A Only from what my father told me. He told me--

24 Q What did your father tell you?

25 A He told me that the then German government didn't

jgjp 2

Graupner-redirect

247

look too kindly on German citizens owning property outside of the country and, if they did, they were in dire straits and therefore Mr. Schmieder wanted to get rid of it.

Q Now, did your father say anything to you about how it was to be given away or to whom it was to be given away?

A He did not.

Q Did you have any discussions with him as to why Helen B. Dwyer was chosen as donee?

A I did not.

Q Did you make any suggestions to anyone about the choice of the donee?

A I certainly did not.

THE COURT: Did you know that he was discussing the subject with either Mrs. Schmieder or Mrs. Bochman?

THE WITNESS: That my father was discussing it?

THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: How did Mr. Martin find out?

MR. MARTIN: Your Honor, that is in the William Graupner transcripts. He so testified in the Alien Property proceedings.

Q Mr. Graupner, did you ever inquire of your father or Mr. Hall, Sr. or Mr. Hall, Jr. as to what other



jgjp 3

Graupner-redirect

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alternatives Kurt Schmieder had to giving this property away?

A I did not.

Q Did there come a time when gift tax returns had to be filed after the property was transferred to Helen Dwyer?

A I don't know. I presume so.

Q Didn't you sign those gift tax returns?

A If there were gift tax returns made, I signed them.

Q You signed them--

A I just don't remember.

Q You signed them under a power of attorney from Jenny Bochman?

A Yes.

Q Mr. Martin questioned you before about Exhibit 37, which is an original German text and your translation of that German text.

You originally made the translation of this letter sometime shortly after you received it, didn't you?

A That's right.

Q And your translation today seems to suggest that you would like to water that down a little bit. Is that what you are trying to imply?

jgjp 4

Graupner-redirect

249

A No, it wasn't. My ability in German is getting less and less each day.

THE COURT: So it was probably better then than it is now.

THE WITNESS: Exactly.

Q Certainly what you translated here reflects the circumstances and events as you understood them, isn't that correct?

A What I translated here was trying to reflect in English what Mr. Schmieder has written in German, to the best of my ability at that time.

Q And you feel your ability was certainly better then than it is today.

A I think so.

Q And what you translated here doesn't vary from your understanding of what had actually occurred, does it?

A I translated as best I could to you what Mr. Schmieder wrote.

THE COURT: All right.

MR. DUFFY: I have no further questions.

MR. MARTIN: May I have this marked as 37A for identification? The only reason I use that is that it refers to that same document, your Honor, if that is agreeable. It is another translation of that same letter.



1 jgjp 5

Graupner-redirect

250

2 THE COURT: I don't see that it makes much dif-  
3 ference.

4 MR. MARTIN: There is a very brief point I want  
5 to make on it, your Honor.

6 (Plaintiff's Exhibit 37A was marked for identi-  
7 fication.)

8 MR. MARTIN: I simply want to point out to the  
9 Court that the two checks referred to as being signed by  
10 Mr. Hall, Jr. were both made out to the Collector of Internal  
11 Revenue.

12 RECROSS EXAMINATION

13 BY MR. MARTIN:

14 Q I asked you about whether or not there should  
15 be a word "probably" inserted in your translation. Mr.  
16 Duffy asked you again about it.

17 Do you recall that at the time you and I first  
18 discussed this that you reviewed that document? Is that  
19 correct?

20 A Right.

21 Q Is that what provoked our discussion as to the  
22 use of the word "probably"?

23 A It did.

24 Q And does the word "probably" or the word in  
25 German meaning "probably" appear in the letter that you

jgjp 6

Graupner-recross

251

received from Mr. Schmieder?

A Yes.

Q Is that the reason that you added that to your translation?

A Yes.

MR. MARTIN: I offer 37.

THE COURT: Is that the initial translation?

MR. MARTIN: Yes, a translation we had done by a translating firm here.

THE COURT: Okay. I assume it is received.

MR. MARTIN: It doesn't have to go in, your Honor.

THE COURT: I don't see what the importance of all this is.

MR. MARTIN: The only thing is, your Honor, it is Schmieder saying it was probably--

THE COURT: I don't see what the importance of either one is.

MR. MARTIN: It is up to you. Do you want it in or out?

MR. DUFFY: It seems to me to be somewhat irrelevant.

THE COURT: You brought it up.

MR. MARTIN: Your Honor, I'll withdraw the



1 jgjp 7

2 offer.

3 THE COURT: All right.

4 MR. MARTIN: I'll withdraw the offer, if there  
5 is an objection.

6 THE COURT: All right.

7 BY MR. MARTIN:

8 Q Mr. Graupner, I would like to ask you, do you  
9 have any financial interest in this litigation?

10 A None. None whatsoever.

11 Q What is your business, sir?

12 A To take care of my own affairs and those of  
13 two trusts established by my parents' will.

14 Q How long have you been simply taking care of  
15 your own affairs, sir?

16 A Ever since I got out of the Service, '45 or so.

17 Q Would you mind telling us approximately what  
18 your net worth is?

19 A My net worth? Oh, 400,000, 500,000, somewhere  
20 along in there. It changes from day to day.

21 MR. MARTIN: I have nothing further.

22 THE COURT: We will take a short recess.

23 (Recess.)  
24  
25

T5A  
B1

rdsjp 1

Hall

253

THE COURT: Ask Mr. Hall to resume the stand.

XXX

LOUIS H. HALL, JR., resumed.

BY THE COURT:

Q Mr. Hall, I have expressed certain opinions and maybe my problem is I haven't got enough background. You graduated in 1934; is that right?

A From law school.

Q That must have made you born in about 1909.

A Correct, sir.

Q And you went first to--

A Deerfield Academy, Amherst College, Columbia Law one year and Brooklyn two years.

Q At that time you went right into your father's firm?

A Yes.

Q Were you married at that time?

A No, I was married in 1936.

Q Were you living with your father then?

A Yes, I was, until I was married.

Q These events occurred in '37 and '38.

A I was living with my wife from August of 1936 on.

Q And this transfer to Mrs. Dwyer was when, what year?



rdsjp 2

Hall

254

MR. MARTIN: 1938.

Q So you were still an associate in the firm?

A Yes, sir.

Q You went to work for your firm probably the same day I went to work for the Cadwalder firm. Apparently things were different in your firm than they were in mine. I worked for a Mr. Taft. It is just inconceivable to me that he would have given me a legal job to do without telling me what it was about. That seems to be the way your father worked. Of course, he wasn't my father, but if he gave me a legal job, I would know why I was doing it.

A I can't remember the details of what he said this was all about. I do remember that I was in on the formation of the corporation. It was the first corporation I had ever participated in forming. I can't remember whether he said this is going to be a holding company for Jenny Bochman, that she is Swiss citizen, and so on. That I don't remember. He may have given me that kind of a background, but I honestly do not remember.

I remember doing the incorporation with Bill Putney because particularly it was the first one I ever did, and having looked over the work product I can see that I did it.

The actual recollection of a given part of any

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given day during that time I cannot remember. It is a long time ago.

Q There came a time when it was wound up?

A Yes, sir.

Q Now, according to the information we have here the reason it was wound up was that Mrs. Bochman was concerned that her son, who lived in Germany, might be in trouble if the stock was traded--if it became known that she had the stock.

A I learned this at some time, your Honor. I don't think it was at the time of the gift. The best of my recollection is that my father said she was going to make a total gift to Helen Dwyer.

Q The evidence is that your father had the choice of who she should give it to.

A I think he and Mr. Graupner did. I don't know which or both.

Q The evidence is--not evidence, I haven't heard any evidence but I have heard statements made that your name was suggested and it was turned down.

Now, you were wholly unaware of that?

A I was wholly unaware of it, yes, sir. Mr. Graupner and my father never included me in any of their conferences. I was told when--



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1                   Q       Mr. Graupner's son was aware that getting rid  
2                   of Schmieder, severing all ties with Schmieder was the  
3                   need for giving this gift.

4                   A       That may be, your Honor.

5                   Q       But you didn't know it?

6                   A       I did not, absolutely not.

7                   Q       Why? Could you explain to me why you should  
8                   be ignorant of it? Why they should have sealed you off  
9                   from this information?

10                  A       I cannot.

11                  Q       You mentioned this was the first corporation  
12                  you formed. How many hundred thousand dollar gifts have  
13                  you been involved in making?

14                  A       Well, none really except for setting up trusts.  
15                  I have set up trusts for people who wanted to set them  
16                  up, charitable trusts.

17                  Q       How many times have you been involved with  
18                  giving a gift to someone that the donor never heard of?

19                  A       Never before, never.

20                  Q       And your relationship with your father was that  
21                  you didn't even ask him how he happened to be giving it,  
22                  how Mrs. Bochman happened to be giving it to someone she  
23                  never heard of?

24                  A       I understand she said she had to get rid of it.  
25

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Q Why did she have to get rid of it?

A Because of the laws that applied.

Q What laws made her want to get rid of it?

A The tax laws required a disclosure by the holder on behalf of the real owner.

Q What tax laws?

A U.S. Tax laws.

Q Why should that trouble Mrs. Bochman?

A Well, as I understood it, she had asked if the property could be put in some name over here without disclosure.

Q Why did she not want disclosure?

A That I do not know.

Q That is what I can't believe and I wish you would explain to me. What kind of a man was your father that he would give his own son a job of this delicacy to do--

A My father was a wonderful man, your Honor.

Q Why would Mr. Graupner, Jr. know, Mr. Graupner, Sr. know and--

A My father at some point told me, your Honor. What I am trying to say is at the very time of the gift when we were asked to transfer the stock from Jenny Bochman to Helen Dwyer I do not recall knowing at that time



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the background that I now have heard and have heard subsequent to it.

Q Your father at some point told you what?

A Well, I have read it so many times I can't say exactly what he told me. It was to the effect that Jenny Bochman wanted to get rid of this stock; that he had told her that he knew of no way that she could do it without making a total gift or having the holding disclosed.

Q Why did she want to get rid of the stock?

A There was an inference that she would be in trouble.

Q Why?

A Because of foreign laws, I suppose.

Q What about foreign laws? I am trying to fathom what manner of man your father was that you could talk to him this way without finding out what he was talking about.

A I was a young attorney. I was carrying out orders. He may not have wanted me to know at the time. I don't know, your Honor.

Q Let's explore that. Why wouldn't he have wanted you to know? I am trying to put myself in your position. As I say, I worked for a fellow named Taft. He was not my father, but he would no more have put me in the position that your father put you into than he would have jumped out

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of this window.

Now, why did he do that?

A I don't know what he was putting me in any such position.

Q That man knew, Mr. Graupner knew and you didn't know. Now, why?

A Hundreds of others may have known or not. I swear I don't think I knew, your Honor.

Q When did you find out? What I am trying to find out is how that could have happened.

A I wish I could say when I found out. It was sometime, I believe, after the gift. The reason I think this is that for a long time I thought that this was Jenny Bochman's gift to Helen Dwyer. It was sometime after that. Whether it was when the Treasury blocked and the question of Schmieder, when he came in then, or whether my father at sometime later told me that this Jenny Bochman was a relative of Schmieder's.

Q What did the gift have to do with Schmieder according to what your father told you?

A Well, that he was in trouble for having filed false reports or not having reported property--

Q Who was in trouble?

A Kurt Schmieder.



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2 Q What was his failure to report?

3 A This property that we now know was in Jenny  
4 Bochman's name but was his. I'm not admitting it was his.

5 Q When did your father tell you it was his?

6 A This is the problem I have. I do not remember  
7 the date, your Honor. I am sure it was sometime after the  
8 closing, after the gift and the winding up of Stoneleigh.  
9 I could be wrong, but I'm just trying to give you the best  
10 of my recollection. I would have no reason to say that I  
11 didn't know it before if I did. I would be happy to, but  
12 I just don't believe that I did know it before.

13 If somebody can prove I did, I'll say fine.

14 Q At some point your father told you that Jenny  
15 Bochman had received this from her brother-in-law Schmieder?

16 A That is right. And I read in his statement, I  
17 think it was to the Treasury, that he had suspected it be-  
18 cause it was Kurt Schmieder who first asked him in Germany  
19 about forming a corporation. And then later Mr. Graupner  
20 told him that the corporation was to be formed for Jenny  
21 Bochman. I read in his statement that he had at that time  
22 suspected that either Kurt Schmieder owned it or might have  
23 had an interest in it.

24 What I am talking about is the point in time  
25 that I learned this, your Honor. I did learn it but I do

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not believe I learned it at the time of the gift. I cannot tell you why. I did learn it subsequently and my father explained it to me.

Q What did your father explain to you?

A That this was allegedly Kurt Schmieder's property.

Q Alleged by whom?

A I guess it was through Mr. Graupner. Of course, at the time of the vesting order, which was enough later so I think I knew about it before then. It was published that the Government claimed it was Kurt Schmieder's. So I knew I knew it by then. But that Kurt Schmieder was in trouble because he had filed false returns or hadn't reported it and was afraid of losing his head.

MR. MARTIN: For the Court's background, you have not had an opportunity to read Mr. Hall, Sr.'s statements to the Treasury, the affidavit. Apparently he states he did not know at the time of the gift. He had met Schmieder and had some inkling of the relationship, but he did not actually know at that time that Schmieder was the real owner.

THE COURT: Why did he think that Mrs. Bochman had to get rid of the property.

MR. MARTIN: His statements indicate that he



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1 thought there was some interest of Schmieder in the property  
2 because of the circumstances and he was told there was some  
3 problems with the law over there. His statements go into  
4 that.  
5

6 What I was driving at is that he apparently did  
7 not know at the time of the gift that this was indeed  
8 Schmider's property. He had some reason to suspect that  
9 because Schmieder had raised the issue with him originally  
10 about forming a holding corporation.

11 But when he got the instructions he was told  
12 that it was Mrs. Bochman who wanted this corporation.  
13  
14  
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2 MR. DUFFY: If I might be heard on the same  
3 subject, your Honor, I had previously given copies of  
4 two investigative reports prepared by the Government, one  
5 dated September 22, 1943, the other dated August 1, 1946,  
6 which go into some considerable detail as to the factual  
7 background of the very matters that you have been inquiring  
8 into with Mr. Hall.

9 I believe these reports may properly be received  
10 in evidence under the federal rules and I would offer them  
11 at this point because they do shed an awful lot of light on  
12 these subjects.

13 THE COURT: What rule are they being offered  
14 under?

15 MR. DUFFY: 8038, public records and reports,  
16 and 804(b)(4), trustworthiness.

17 MR. MARTIN: Let me say this: I have read these  
18 reports. The August 1, 1946 report reflects statements  
19 of Mrs. Dwyer and Mr. Hall, Sr. on the subject and I would  
20 have no objection, because that is all they are, they are  
21 statements of two of the parties here.

22 As to the other report I do object to the extent  
23 that it contains a lot of other material that does not  
24 derive from these two individuals.

25 THE COURT: It would seem, regardless of where



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2 it was derived from, it would be admissible under Rule 8038.

3 MR. MARTIN: I think, your Honor, that that rule,  
4 as does the hearsay rule, generally says that simply gets you  
5 by the fact that, all right, these are authentic. You  
6 still have the hearsay within hearsay. Obviously, Mrs.  
7 Dwyer -- all right, we now have it authenticated as being  
8 her statement so that it is an admission.

9 THE COURT: "The following are not excluded by the  
10 hearsay rule, even though the declarant is available as  
11 a witness."

12 MR. MARTIN: I think that is true but I think  
13 there is something in the earlier rule that says that hearsay  
14 within a hearsay is not admissible.

15 MR. DUFFY: We can eliminate much of this argument,  
16 your Honor, because even the report to which Mr. Martin  
17 is objecting says, "According to Hall three letters were  
18 prepared."

19 MR. MARTIN: I don't object to that report insofar  
20 as it reflects what Hall said or what Mrs. Dwyer said. I  
21 think having read both reports, the September report, like  
22 many investigative reports I have read, does no more  
23 than summarize a lot of things. When they reflect what Hall  
24 said or what Mrs. Dwyer said in that report, they are  
25 simply taking out of the August 1st report and now putting

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2 into an overall report. What is reported there is coming  
3 from Mr. Hall and Mrs. Dwyer. I have no objection to the  
4 September report insofar as it relates solely to what was  
5 said by Mrs. Dwyer and Mr. Hall. I do object to everything  
6 else on the ground of what somebody else may have said.  
7 I'm not disputing they said it. But that is hearsay.

8 THE COURT: You are saying all this does is get  
9 us to the point of having the fellow who wrote the report  
10 on the witness stand.

11 MR. MARTIN: That is right.

12 MR. DUFFY: If you would refer to 805, I think  
13 that might address the other objection that Mr. Martin  
14 raises.

15 THE COURT: What other part of the combined state-  
16 ment? How does that get us by this?

17 MR. DUFFY: I think the initial rule cited,  
18 8038 and 804(b)(5) cover the entire matter. But even as to  
19 the hearsay objection of Mr. Martin, if I understood his  
20 objection correctly, I think --

21 MR. MARTIN: I think your Honor's analogy is the  
22 right one. The exception that Mr. Duffy first relies on is  
23 the one that says all right, this is admissible as  
24 if the man were here on the stand. But if he were here on  
25 the stand he would not be competent to testify as to what



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2 other people told him because that is hearsay. Absent  
3 some exception, and here we have an admission by Mrs.  
4 Dwyer, and I know your Honor has been taking statements  
5 of Mr. Hall on some type of agency theory, so that that  
6 might come in as an admission. But on the investigation,  
7 that to me is inadmissible hearsay.

8 THE COURT: It would seem so at the moment.

9 I will take it subject to exception.

10 MR. DUFFY: As I understand it, the August 1st  
11 report is not objected to in any event.

12 MR. MARTIN: That is correct.

13 MR. DUFFY: And that the September 23rd report  
14 is objectionable only in part.

15 MR. MARTIN: Objectionable insofar as it contains --

16 THE COURT: Other peoples' statements beside Mr.  
17 Hall and Mrs. Dwyer.

18 MR. MARTIN: Right, your Honor.

19 (Plaintiff's Exhibits 39 and 40 received in  
20 evidence.)

21 MR. DUFFY: I would also direct your attention  
22 to 804(b) (5) which gives the Court very broad discretion in  
23 accepting evidence. I would urge the September report,  
24 as the August report, should both be received without any  
25 objection.

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2 THE COURT: You can't get them received without  
3 objection. That is not within your power.

4 MR. DUFFY: Be received into evidence without any  
5 exception is what I meant to say.

6 MR. MARTIN: I could even make a frivolous  
7 objection, but I don't think this objection is frivolous.  
8 I don't think that the rule does cover that type of  
9 information.

10 THE COURT: I have noted your objections. When  
11 I deal with it you will see to what extent I have committed  
12 error.

13 MR. MARTIN: I have nothing further, your Honor.

14 MR. DUFFY: May I just put one further document  
15 into evidence. I would like to again reoffer the Putney  
16 transcript on the same basis --

17 THE COURT: What do you want now?

18 MR. DUFFY: The transcript of the examination of  
19 William B. Putney III that occurred on April 21, 1971.

20 THE COURT: What are you offering it for?

21 MR. DUFFY: I asked Mr. Putney at that time--

22 MR. MARTIN: Page?

23 MR. DUFFY: Page 78. "Did you participate in  
24 preparing any documents for Stoneleigh Corporation?

25 "A No.



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2 "Q Who did that?

3 "A I think Lou Hall, Jr. prepared them.

4 "Q To your knowledge did anyone else help in the  
5 preparation?

6 "A Not to my knowledge."

7 THE COURT: I don't think that is particularly  
8 relevant.

9 MR. DUFFY: The entire transcript is relevant  
10 because it goes into other subjects. Mr. Putney gives opinions  
11 as to Mr. Hall's representation of German nationals and  
12 clarifies things Mr. Hall testified to with a degree of  
13 certainty.

14 THE COURT: Just call my attention to it while  
15 Mr. Hall is here and maybe he can clarify them.

16 MR. DUFFY: Page 51 there is an exchange between  
17 Mr. Putney and myself where I inquire into his firm's  
18 representation of German nationals. The exchange goes as  
19 follows:

20 "Q Did you personally have any involvement with  
21 German nationals at the time?

22 "A No.

23 "Q To the best of your recollection which members  
24 of your firm were so involved?

25 "A Principally Hall, S-."

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2 THE COURT: You testified he had some German  
3 national clients?

4 THE WITNESS: He certainly did. He had several  
5 German clients. No question about that. I'm a trustee of  
6 an estate of a testamentary trust, Lydia Kik trust,  
7 which was one of my father's clients, and her husband Ludwig  
8 Kik was. There were several Germans for whom dad did legal  
9 business.

10 MR. DUFFY: At page 72 I asked Mr. Putney:

11 "Q Do you know if Kurt Schmieder was one of those  
12 clients? "

13 THE COURT: What is the answer?

14 MR. DUFFY: The answer was, "I don't think he was  
15 a client.

16 "Q Di you know if Hall, Sr. consulted with Kurt  
17 Schmieder on that trip?

18 "A I think he did."

19 We are talking about the '35 trip.

20 THE COURT: All right, you are excused.

21 (Witness excused.)

22 MR. DUFFY: I wanted to offer the original  
23 complaint which is in the Court's file -- the answer to the  
24 complaint which is in the Court's file.

25 MR. MARTIN: Your Honor, I don't think we have



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2 to pull that out of the Court file. It is in the file.

3 There is no question that the answer filed is authentic.

4 I think the question that Mr. Duffy is offering it for is  
5 because the original answer admitted this was Schmieder's  
6 property. The amended answer disputed that fact. I

7 view the amended answer as controlling.

8 THE COURT: The question that occurs to me is why  
9 they filed such an answer if it wasn't true?

10 MR. MARTIN: Your Honor, that one, I suppose,  
11 only Judge Owen can answer.

12 THE COURT: I can assume -- it seems to me I can  
13 assume the fact was true or they wouldn't have admitted it.

14 MR. MARTIN: I don't think it is given the fact  
15 the answer was amended and it doesn't have probative value.  
16 I don't think the answer is probative.

17 THE COURT: I don't see why it isn't when it is  
18 drafted by people concededly having knowledge of the facts.  
19 It wasn't drafted by a lawyer who didn't know what he was  
20 doing. It was drafted by the Hall firm who concededly  
21 had knowledge. The witness testified he knew it at  
22 some point.

23 MR. MARTIN: It was drafted by Mr. Owen, not by  
24 the Hall firm.

25 THE COURT: But in consultation with the Hall

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2 firm.

3 MR. MARTIN: Surely. I think the fact is, and I  
4 don't want to belabor it, nobody I suppose but Jenny Bochman  
5 and Kurt Schmieder really do know whether that was Kurt  
6 Schmieder's property or not. I think that that is --

7 THE COURT: Well, apparently Mr. Hall knew.

8 MR. MARTIN: If you read Mr. Hall, Sr.'s  
9 statements --

10 THE COURT: I know if I read his statements.

11 MR. MARTIN: Mr. Hall, Jr. said that these things  
12 came up. Yes, there were clearly allegations in the  
13 alien custodian proceeding that this was Schmieder's  
14 property. Bochman said so. We are not --

15 THE COURT: Is there any other conceivable theory  
16 why Jenny Bochman wanted to give this money away except  
17 that it was Schmieder's?

18 MR. MARTIN: I assume that there is.

19 THE COURT: What is it?

20 MR. MARTIN: It may have been hers. She may have  
21 been carrying this on herself and not telling authorities.  
22 I don't know.

23 THE COURT: She was a Swiss citizen. If it was  
24 hers she wouldn't need to worry about it.

25 MR. MARTIN: Apparently, your Honor, there are



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2 in the Government files some indications that she herself  
3 was having problems with property.

4 THE COURT: What motive would she have had of  
5 saying it was Schmieder's?

6 MR. MARTIN: Your Honor, let me say this: My  
7 basic position is, A, a little one, that if the property  
8 was transferred to Bochman as part of a tax evasion  
9 scheme and at that point he lost it. That is the issue I  
10 don't want to concede.

11 THE COURT: Of course you are not going to concede  
12 that.

13 MR. MARTIN: That is why I am really raising the  
14 objection to this particular document. It is not probative  
15 of anything.

16 THE COURT: It is probative. It doesn't have  
17 anything to do with your legal argument. Assuming it was  
18 Schmieder's property he couldn't get it because of his previous  
19 transfer to Bochman in defrauding the German Government,  
20 which, unless I am dissuaded I will make a finding of fact  
21 in your favor.

22 But how on the evidence I can come to any con-  
23 clusion but that it was originall Schmieder's property,  
24 I don't know. Otherwise everybody has to be insane.

25 MR. MARTIN: I agree with you, your Honor.

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2 THE COURT: It doesn't seem to me I am bound to  
3 proceed on the assumption everybody was insane.

4 MR. MARTIN: I agree with that. I am not suggesting  
5 that the evidence doesn't indicate that at some point  
6 Schmieder had an interest in that property. All I am  
7 suggesting is insofar as whether he had an interest  
8 in that property in 1938 is really a legal issue as to  
9 which I think there is some question. That is why I say  
10 that the mere fact there was an admission in the answer --

11 THE COURT: Well, the admission in the answer  
12 obviously doesn't preclude you from thinking up a new legal  
13 reason for defeating the facts. But the admission in the  
14 answer seems to me is probative to establish the fact that  
15 it was his property in his eyes and Mrs. Bochman's eyes.

16 Now, if there is an inadmission of law of  
17 enforcing that, that is another question.

18 MR. MARTIN: That is all I'm trying to preserve.  
19  
20  
21  
22  
23  
24  
25



1  
2 MR. DUFFY: Your Honor, let me just state, very  
3 briefly, that this document was prepared during Helen Dwyer's  
4 lifetime and I would expect, if Mr. Owen would have had an  
5 opportunity to confer with --

6 THE COURT: Helen Dwyer wouldn't have thought of  
7 this legal defense. They dreamed up a defense, which, for  
8 all I know, the Court of Appeals, or the Supreme Court if it  
9 ever gets there, may buy, namely that Schmieder sought to  
10 defraud the German Government by giving this property to  
11 his sister-in-law, which he clearly did.

12 There is no question on God's earth that he was  
13 committing a fraud on the German Government. We would  
14 all have to be crazy not to see that, too.

15 Now, they argue, and Mrs. Dwyer certainly isn't  
16 chargeable with thinking this up, that that fact in law  
17 prevents Schmieder from asserting this claim now.

18 I disagree. That is an argument they can make,  
19 and this answer doesn't preclude it. All this answer tells  
20 you is that they hadn't thought of it at the time it was  
21 put in.

22 MR. DUFFY: It also makes a factual assertion,  
23 which is why I'm offering it.

24 THE COURT: It makes a factual assertion which they  
25 say Schmieder is to be barred from asserting. They don't

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2 claim that it wasn't Schmieder's property in the first place.  
3 At least I thought they were claiming that a while back,  
4 but they seem to have given up on that.

5 MR. DUFFY: The statement made in the answer as  
6 plaintiff made a gift. It doesn't say Bochman made a gift.

7 THE COURT: I know that. That is what she said.  
8 Plaintiff made a gift. That is not a factual statement.  
9 It is a legal statement. They now say the plaintiff doesn't  
10 have the power to make that gift. They are not saying that  
11 the plaintiff didn't say to Mr. Graupner, "I want you to get  
12 rid of this property."

13 They are saying that because of what plaintiff  
14 had previously done, as a matter of law he was not authorized  
15 to tell Graupner anything about that property.

16 Now, I happen to disagree with that. The Court  
17 of Appeals may agree with them, if it ever gets up there.

18 (Pause.)

19 MR. DUFFY: Your Honor, that concludes our case.

20 MR. MARTIN: First I would like to move to dis-  
21 miss on the failure of the plaintiff to make out a prima  
22 facie case.

23 THE COURT: Obviously I can't make that ruling  
24 from the bench because I haven't seen half the evidence.

25 MR. MARTIN: I thought your Honor would reserve



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2 on that, but I thought for the record I should make it.

3 THE COURT: All right.

4 MR. MARTIN: Your Honor, I would like to offer  
5 in evidence certain portions of the examination of Madeline  
6 B. Nugent in the Surrogate's Court proceeding.

7 THE COURT: Who is she?

8 MR. MARTIN: She was a witness to Mrs. Dwyer's  
9 will, a friend of Mrs. Dwyer, and I have what amounts to  
10 probably no more than four pages of that that I wanted to  
11 read. Perhaps, if I could read those into the record, your  
12 Honor will see the purpose for which they are being offered  
13 and then can consider any objection to that.

14 THE COURT: All right.

15 MR. MARTIN: This is Exhibit 22. It has been marked  
16 by us.

17 MR. DUFFY: Your Honor, may I make this suggestion?  
18 Could we admit the entire document and Mr. Martin may,  
19 in his post-trial memo --

20 THE COURT: I prefer to hear it now than have to  
21 wait and wade through the post-trial memos.

22 (Plaintiff's Exhibit 22 marked for  
23 identification.)

24 MR. MARTIN: Page 9, your Honor, beginning on  
25 line 3, and I think we could stipulate she is being

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questioned about the 1956 will, is that correct, Mr. Duffy?

MR. DUFFY: Yes.

MR. MARTIN:

"Q Did you see Mrs. Dwyer read the will:

"A I can't say I saw her read word for word.  
I think she looked down the page. But I can't say she just--  
I didn't see that.

"Q Were you referring to just the first page when  
you said she looked down the page?

"A I really can't recall too closely. She didn't  
just lift up the page and sign it. I think she read down  
the page and signed it. I can't recall. I know she signed  
the will in front of me and the rest of us."

Then I wanted to read page 10, beginning on line  
21:

"Q How long have you known her," referring to  
Mrs. Dwyer.

"A I knew her since 1943 and I was friendly with her  
since about 1950, '51, around then. We worked in the same  
office, but we were at different parts of the office at the  
beginning. And around '60 or '51, around that time, the  
office arrangements were changed and I shared an office with  
Mrs. Dwyer, and from then on we were very friendly.

"Q You used to have dinner together regularly?



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2 "A We did, yes. That is when we really started to  
3 have dinner together, not lunch, but dinner, together."

4 Then at page 21, your Honor, beginning on line 3:

5 "Q You used to have dinner quite frequently with  
6 Mrs. Dwyer, did you not?

7 "A Yes.

8 "Q During the course of these dinners, did she ever  
9 speak of Mr. Hall and any of his family?

10 "A Yes. She was very close to Mr. Hall's family.  
11 I don't think that anyone I knew of was as close to her as  
12 the entire Hall family. His sisters, one sister in  
13 particular, corresponded a great deal. When I say 'a great  
14 deal,' more than several times a year. She didn't live  
15 near by. I know Helen was very fond of her particularly,  
16 fond of the one sister.

17 "Q What was this one sister's name?

18 "A Adelaide McIntosh. She corresponded quite a bit.  
19 She is way up in Dover and Helen was in New York.

20 "Q What did she tell you about the letters?

21 "A I can't say within the time any definite time.  
22 But if Helen went on a trip in that area, they would  
23 stop in and spend time with Adelaide McIntosh.

24 "Q Did you ever know Adelaide McIntosh?

25 "A No, I never met her.

1 jgrf 6

2 "Q How about Mrs. Webb?

3 "A I met Mrs. Webb on possibly two occasions that I  
4 know of.

5 "Q Was Mrs. Dwyer present on those two occasions?

6 "A No. This would be when Mrs. Webb came to see  
7 her brother."

8 I'll continue reading. I could really skip, your  
9 Honor -- that ended at line 5 on page 22 -- down to line 19:

10 "Q What did she tell you about Mr. Hall?

11 "A Mr. Hall, Jr.?

12 "Q Yes.

13 "A I know she was very, very fond of him and she  
14 never made a secret that she relied on him and confided  
15 in him. I can guess things. I think she was very, very  
16 fond of Mr. Hall."

17 THE COURT: Made a secret what?

18 MR. MARTIN: "I can guess things. I know she was  
19 very, very, fond of him and she never made a secret  
20 that she relied on him or confided in him. I can guess  
21 things. I think she was very, very fond of Mr. Hall  
22 and she knew Mr. Hall, Sr. They were friendly. And  
23 with the young people, well, she had no family. I think  
24 she just embraced them all.

25 "Q Did she tell you about her family?



1 jgrf 7

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2 "A Very little."

3 I think that was all I intended to read on that  
4 page.

5 Then page 29, your Honor, beginning on line 12:

6 "Q You mentioned that you were up to Helen Dwyer's  
7 apartment often and she lived well. Did you at any time  
8 question how she was able to live that well?

9 "MR. OWEN: To herself you mean, or question  
10 Mrs. Dwyer?

11 "MR. ELLMAN: Questi- Mrs. Dwyer.

12 "A I wouldn't dare to question Mrs. Dwyer about  
13 anything. She had a private world that she wouldn't let me  
14 in on. I wouldn't dare ask her a question. She told you  
15 what she wanted you to know. She was very strong-willed and  
16 she did exactly as she wanted to do."

17 Then, your Honor, skipping to page 52, line 22:

18 Your Honor, may I have a minute? I apparently  
19 made a wrong note. There is one more portion I want to read,  
20 and I see the note I have is as to the wrong page.

21 (Pause.)

22 MR. MARTIN: I think I found the reference.  
23 Sometimes I have problems reading my own writing.

24 Page 56, beginning on line 22:

25 "Q Mrs. Nugent, over any of the years that you had

1 jgr: 8

2 known Mrs. Dwyer, did she ever tell you that anybody was  
3 making her execute a will that she didn't want to  
4 execute?

5 "A She never told me. I don't think anybody would  
6 dare to try to. She was a woman who lived by herself,  
7 what she did she wanted to do, even in minute detail.  
8 If she didn't want to do it, she wouldn't do it."

9 That is all I want to read from Mrs. Nugent.

10 MR. DUFFY: Your Honor, I would like to inquire  
11 whether Mrs. Nugent is alive.

12 MR. MARTIN: My understanding is that she is,  
13 your Honor, although I believe she is in her late 70's.

14 MR. DUFFY: And I would also like to inquire  
15 whether she still resides in Brooklyn.

16 MR. MARTIN: That is my understanding, your  
17 Honor.

18 MR. DUFFY: If she is alive and she lives in  
19 Brooklyn, I would object to the admissibility of this  
20 transcript.

21 MR. MARTIN: Let me say something by way of  
22 background. You will note that the objection that was made  
23 to this was of relevance and competence. It was a  
24 deposition that Mr. Duffy originally indicated he intended  
25 to offer. There was no objection --



1 jgrf 9

2 MR. DUFFY: I --

3 MR. MARTIN: Let me state my case and you can take  
4 your time later, Mr. Duffy.

5 There was no question that this was authentic.  
6 There was no question being raised about her not being  
7 here. This was a deposition conducted in large part by  
8 Mr. Duffy. The lady is 76 years old and I understand it  
9 would not be an easy thing for her to come here.

10 There had never been any objection raised and  
11 that is why I offered these portions.

12 THE COURT: If Mr. Duffy wants to call her and  
13 correct it in any way, he can.

14 MR. DUFFY: Your Honor, I am objecting as to  
15 the fundamental admissibility under the federal rules.  
16 The woman is here.

17 Those objections as to relevance and competency  
18 were Mr. Martin's objections, not mine. I chose not to  
19 offer this.

20 THE COURT: How relevant it is, I don't know.  
21 It has bearing on the suggestion that I think you made  
22 that Mr. Hall may have influenced Mrs. Dwyer. I don't see  
23 how that is relevant in this lawsuit.

24 MR. DUFFY: Furthermore, I think, if you check  
25 most of the portions that Mr. Martin was reading, I believe

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it was the examination of Mr. Ditmar, who represented the Public Administrator, Mr. Ellman, who represented --

THE COURT: If you were there, they didn't get away with anything.

MR. DUFFY: I was there, but not representing this particular plaintiff at the time.

THE COURT: I don't see that it is really worth the discussion because I don't see that it has much bearing on anything except tangentially on the relationship and that Mrs. Dwyer was able to make up her own mind. It seems to establish that.



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MR. MARTIN: Your Honor, I do have some other exhibits that I would like to offer.

THE COURT: We will only take the part that has been read. If Mr. Duffy wants to call my attention to any other part, he can.

MR. DUFFY: Your Honor, may we do that in our posttrial memorandum?

THE COURT: Yes.

MR. DUFFY: Thank you, your Honor.

MR. MARTIN: I would like to offer at this time Exhibit B, which is the original claim filed with the Alien Property Office by Kurt Schmieder, and the orders denying the return -- this is the separate fund -- to him, your Honor.

THE COURT: A different fund?

MR. MARTIN: Yes, your Honor.

THE COURT: What is the relevance of that?

MR. MARTIN: I am offering it really in light of a legal argument that we will be making, your Honor, which is basically the one the United States is making also, that Schmieder, whatever interest he may have had even in this property vested in the government, when they settled with Mrs. Dwyer they disposed of any interest. And also this is, to take the point further, to show that he did not have any right to any return

1           jqa2  
2       of property under the Alien Property law, that he did  
3       make a claim that he was entitled to its return and it  
4       was denied.       That had not been adjudicated further,  
5       your Honor.

6           THE COURT:    I think that seems to me is  
7       going to gobble up any recovery that he makes here.

8           MR. MARTIN:    I think that probably is true,  
9       your Honor.       But I also think that it is relevant to  
10      the legal argument we will make, and that's why I am  
11      offering these documents.

12          THE COURT:    Received.

13          (Defendant's Exhibits B and C for identifica-  
14      tion were received in evidence.)

15          MR. MARTIN:    I would now offer Exhibits  
16      E and F.

17          THE COURT:    What are they?

18          MR. MARTIN:    Those are two letters from  
19      Mrs. Bochman.       They are both 1938.       One is addressed  
20      to Mrs. Dwyer, in which Mrs. Bochman says she is the  
21      owner of Stoneleigh and "wants to make an absolute gift  
22      to you."       And the other is one addressed to the law  
23      firm about the same time, maybe the same day even, con-  
24      firming the fact that she wishes to make those --

25          MR. DUFFY:     They are already part of the



1 jga3

2 record in connection with the Stoneleigh minutes and  
3 records that have been previously introduced.

4 MR. MARTIN: I am not sure that that cor-  
5 respondence was in it.

6 THE COURT: It wouldn't hurt to have them  
7 in.

8 MR. MARTIN: It wouldn't hurt.

9 (Defendant's Exhibits E and F for identn-  
10 tification were received in evidence.)

11 MR. MARTIN: Your Honor, at this time I  
12 would offer in evidence as Exhibits G-1 and G-2  
13 copies of a statement submitted by Ralph Schmieder, the  
14 son of Kurt Schmieder, to the government authorities con-  
15 ducting the investigation of this matter. This was  
16 a statement prepared by Ralph Schmieder on February 7,  
17 1949. And G-2 is what he refers to as the exhibits  
18 to that statement.

19 THE COURT: This is Schmieder's son?

20 MR. MARTIN: That's right.

21 THE COURT: Saying Schmieder had no inter-  
22 est in the property?

23 MR. MARTIN: He refers to the fact that  
24 his father had given him the June 1, '48 memo confirming  
25 the gift to Mrs. Bochman.

1 jqa4

2 THE COURT: The gift to Mrs. Bochman?

3 MR. MARTIN: The gift to Mrs. Dwyer of  
4 Mrs. Bochman's property.

5 (Defendant's Exhibits G-1 and G-2 for  
6 identification were received in evidence.)

7 MR. MARTIN: I offer as Defendant's Exhi-  
8 bit H -- this is an affidavit of a lady by the name of  
9 Magdalena Schoch, who filed this affidavit really on  
10 behalf of the government in the Alien Property proceed-  
11 ing. She is an expert. She lists her expertise  
12 in German law and she gives the background of the various taxes  
13 in Germany at the time.

14 I am not sure at this point. Mr. Duffy  
15 at one point said he had no objection. He said he  
16 wanted to check with Mr. Gillespie.

17 MR. DUFFY: We have no objection to Dr.  
18 Schoch's affidavit. I am informed we would want to  
19 introduce it ourselves.

20 THE COURT: The gist of it --

21 MR. MARTIN: It fills in the background,  
22 your Honor, in the German law, that there were property  
23 taxes prior to 1934 and the increasing penalties  
24 that did occur under the Nazis.

25 THE COURT: There is no question, is



1 jga5

2 there, Mr. Duffy, that Mr. Schmieder was defrauding the  
3 pre-Hitler government by this arrangement with Mrs.  
4 Bochman?

5 MR. DUFFY: I'm not prepared to concede  
6 that, your Honor.

7 THE COURT: Are you prepared convincingly  
8 efute it?

9 MR. DUFFY: I am really not prepared to  
10 sav anything about it because --

11 THE COURT: You must have given it a lot  
12 of thought. So I am asking you what your position  
13 contra is.

14 MR. DUFFY: My recollection is --

15 MR. MARTIN: While he is doing that, can  
16 we have the clerk marking those, your Honor?

17 MR. DUFFY: Your Honor, we are going to  
18 introduce some documents on rebuttal that show Mr.  
19 Schmieder's anti-Nazi reputation.

20 THE COURT: This is long before there  
21 were any Nazis. I mean, not before there were any  
22 Nazis but before they were in control of anything.

23 MR. DUFFY: It would be our position  
24 that he foresaw --

25 THE COURT: And therefore did not want to

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2 pay taxes? He didn't want to pay taxes to the Weimar  
3 Republic because he foresaw that Hitler was going to  
4 take it over? Is that your position?

5 MR. DUFFY: This is not something that  
6 occurred overnight. Mr. Schmieder was politically  
7 active and he was --

8 THE COURT: I know. But I'm politically  
9 active too and I don't like to pay taxes. But there  
10 is nothing inconsistent with those two things. At  
11 least I was politically active at one time and I did  
12 not like to pay taxes then any more than I like to pay  
13 them now.

14 Were there any other purposes in his  
15 putting this money in Mrs. Bochman's name except to de-  
16 feat the taxes of the Weimar Republic?

17 MR. DUFFY: I think that Mr. Schmieder was  
18 aware of what was going to occur and --

19 THE COURT: But these are taxes to the  
20 Weimar Republic which presumably might have helped pre-  
21 vent that from occurring, if they had been paid.

22 Did he have any other purpose in setting up  
23 Mrs. Bochman except to defeat the taxes of the Weimar Re-  
24 public? I ruled that I don't think that lets you  
25 out, but I would like to know if there is any way of



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doubting that premise.

MR. DUFFY: I have no information beyond what I've told you that would contradict that, your Honor.

THE COURT: All right.

(Defendant's Exhibit H for identification was received in evidence.)

(Defendant's Exhibits J-1 through J-5 were marked for identification.)

MR. MARTIN: Your Honor, I would offer these letters. It is an exchange of correspondence between Mrs. Dwyer and a man named Landa. Really the Landa letters are offered simply to give the back ground. The letters of Mrs. Dwyer are being offered, your Honor, to show some of the facts relating to her attitude towards the property, and I think --

THE COURT: Who is Mr. Landa?

MR. MARTIN: Mr. Landa was representing Mrs. Dwyer in connection with the vesting by the treasurer.

THE COURT: He is the one that used to be a partner in the firm?

MR. MARTIN: There are two firms that came in. His firm is Davies, Richburg, Bujick & Richardson.

1 jqa8

2 THE COURT: He is not the former partner --

3 MR. MARTIN: That was Sanborn, your Honor.  
4 Landa got involved earlier in the Treasury proceedings and  
5 these are just exchange of correspondence which I  
6 think, when your Honor sees them, will give the whole  
7 flavor to Mrs. Dwyer's view of the affair.

8 THE COURT: Any objection?

9 MR. DUFFY: No, your Honor. In fact,  
10 one of the letters in that exchange is a letter that we  
11 have already introduced.

12 MR. MARTIN: I don't know if you want to  
13 see them now.

14 THE COURT: No.

15 (Government's Exhibits J-1 through J-5 for  
16 identification were received in evidence.)

17 MR. MARTIN: Could I have these marked  
18 as K-1 through K-8.

19 (Defendant's Exhibits K-1 through K-8 were  
20 marked for identification.)

21 MR. MARTIN: Your Honor, K-1 is a document  
22 which is referred to in Mr. William Graupner's letter  
23 to Mr. Hall, Sr. that your Honor read this morning.  
24 We had offered it into evidence as Mr. Graupner says,  
25 "I am enclosing herewith a statement I got from Schmieder



1 jga9

2 at the time," and he gives the translation. This is  
3 the original German document signed by Mr. Schmieder.

4 THE COURT: Is there a translation of it?

5 MR. MARTIN: There is not. But you have  
6 the translation in Mr. Graupner's letter.

7 THE COURT: I see.

8 MR. MARTIN: I think Mr. Duffy had  
9 agreed with me last week that Mr. Graupner's translation  
10 was accurate.

11 THE COURT: This is the one that says just  
12 that one line in the translation.

13 MR. MARTIN: In substance, "I am in  
14 agreement with the arrangements for the disposition of  
15 Mrs. Bochman's property."

16 Exhibit K-2, your Honor, is the June 1, 1948  
17 statement signed by Kurt Schmieder that was delivered  
18 in the Alien Property proceeding. That is the state-  
19 ment in which she says, "The undersigned confirms  
20 herewith that it is understood by him that the gift of  
21 Mrs. Bochman's bank balance with the New York Trust Company  
22 and of securities deposited there to Mrs. Dwyer is a  
23 voluntary, absolute and irrevocable gift, without any  
24 obligation to Mrs. Dwyer."

25 THE COURT: What are the circumstances of

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2 that?

3 MR. MARTIN: The proof as to that, your  
4 Honor, comes mainly from the deposition of Mr. Schmieder,  
5 who said that a Dr. Linder, whose name appears on the  
6 document, came to him, Schmieder, in 1948, visited  
7 Schmieder in his office in Germany. Schmieder was not  
8 incarcerated at the time.

9 THE COURT: In 19-what?

10 MR. MARTIN: June, '48. And that he  
11 gave Linder this document. He says at one point,  
12 "I thought it would be helpful in the litigation."  
13 There is some indication in Schmieder's testimony,  
14 again, that Graupner may have asked Linder to see Schmieder  
15 and get such a statement.

16 THE COURT: Graupner?

17 MR. MARTIN: May have. Graupner was  
18 never examined on this, so we don't have any statement  
19 by him. All we have is what is in Schmeider's depo-  
20 sition. which obviously we will quote to you at some  
21 length.

22 THE COURT: Now, how do you explain this  
23 statement?

24 MR. DUFFY: I think that it is just a fur-  
25 ther chain in the events, your Honor, where Kurt Schmieder



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2 did what his attorneys in New York told him to do.

3 THE COURT: According to what Mr. Martin  
4 just said, his attorneys in New York did not figure --

5 MR. DUFFY: I don't agree with Mr. Martin's  
6 characterizations. Our understanding or our reading  
7 of the record is that this statement was presented to  
8 Mr. Schmieder with the explanation that Graupner says  
9 the attorneys need it for litigation.  
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2 MR. MARTIN: That is just factually not correct.  
3 We will stand on the record.

4 THE COURT: In any event --

5 MR. DUFFY: That is our interpretation, Mr. Martin,  
6 as you presented your interpretation.

7 THE COURT: It is certainly clear he knew what  
8 he was saying.

9 MR. DUFFY: It is. I don't think it is relevant  
10 to the basic issue as to whether an attorney may induce a  
11 gift to himself.

12 THE COURT: No. But it has some relevance to the  
13 issue of whether it was a gift.

14 MR. DUFFY: He says it was an absolute transfer.  
15 He said nothing that it was freely made or knowingly made  
16 or the intent for the use of that property.

17 MR. MARTIN: Your Honor --

18 THE COURT: There is certainly no question that  
19 it was intended to be a fraud on the United States, in  
20 view of his present position.

21 MR. DUFFY: I don't see how he can say that, your  
22 Honor.

23 THE COURT: How can he say anything else? He  
24 certainly must have known that the proceeding was an  
25 attempt by the Justice Department, the alien property custodian,



1 rdrf 2

2 whatever it was, to prove that this was Schmieder's property  
3 and therefore the property of the United States. He  
4 had to know that, didn't he?

5 MR. DUFFY: He was merely following the advice  
6 of his --

7 THE COURT: I understand. You said that several  
8 times. Do you contend he did not know the purpose of the  
9 proceeding pending in the United States?

10 MR. DUFFY: I don't think he was aware of the true  
11 nature of the proceeding, your Honor.

12 THE COURT: What did he think it was? What is  
13 your position of what he thought?

14 MR. DUFFY: I think he just knew that there was  
15 something going on and possibly needed documents.

16 THE COURT: Answer my question. What is your  
17 opinion or position as to what he thought? Not that he  
18 knew something was going on, what did he think was going on?

19 MR. DUFFY: Your Honor, at this time Mr. Schmieder  
20 was in the Eastern Zone of Germany and it was exceedingly  
21 difficult to communicate directly with him.

22 THE COURT: You have talked with him, you have  
23 taken his deposition. What is his present position as  
24 to what he thought at the time he made that statement?

25 MR. DUFFY: No one communicated to him precisely

1 rdrf 3

2 what the status was here and he did not know.

3 THE COURT: Answer my question. Not having been  
4 told what did he think? What does he now say he thought  
5 when he made that statement?

6 MR. DUFFY: I did not take his deposition and  
7 I've never met with Schmieder.

8 THE COURT: You have read it, I assume.

9 MR. DUFFY: I think he was aware there was some  
10 litigation and it required a document from him of this type  
11 and he was told it was necessary and he signed it. He --

12 THE COURT: He didn't know what the litigation  
13 was about?

14 MR. DUFFY: He just knew there was some litigation  
15 and this was necessary for it.

16 MR. MARTIN: Your Honor, I would just point out  
17 that at page 24 of the transcript when he was asked  
18 about this document in his deposition Mr. Schmieder said,  
19 "Now turning again to Defendant's Exhibit G, Mr. Schmieder,  
20 did you have any correspondence or conversation with Mrs.  
21 Dwyer concerning this exhibit.

22 "A No. I only thought that Mr. Graupner would need  
23 that for the" -- my original copy said litigation. Apparently  
24 there was some change made.

25 What is that word, Mr. Duffy? Is that, "procedure"?



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1  
2 MR. DUFFY: Yes.

3 MR. MARTIN: The word apparently changed by Mr.  
4 Schmieder was "for the procedure" rather than litigation.

5 I would also point out that in his deposition Mr.  
6 Schmieder said that from his experience in World War I that  
7 the Americans and the English were champions at seizing.

8 Your Honor, I would offer as Exhibit K-3 -- let me  
9 pass K-3 for a minute.

10 I'm sorry, K-3, your Honor, is a document we  
11 obtained from the Government's file concerning Mr. Schmieder's  
12 claim. It is the interrogation of Kurt Schmieder by  
13 a Mr. Orenberger of the American Consulate General in  
14 Munich on February 4, 1958.

15 Your Honor, in view of the fact that this --  
16 I'm perfectly happy to have the whole thing in, but in  
17 view of the fact that this litigation involves some very  
18 serious charges by Mr. Schmieder I think that his credibility  
19 is very much in issue. This is a statement now made in  
20 1958 in which Mr. Schmieder was asked, "Did you ever have any  
21 difficulties on account of the foreign currency laws in  
22 force?"

23 Mr. Schmieder replied at that time, "No, never."

24 THE COURT: What was the issue in that statement?

25 MR. MARTIN: This had to do with his second fund,

1 rdrf 5

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2 the non hot money, the money kept in his name. I'm offering  
3 it for that purpose.

4 THE COURT: Any objection?

5 MR. DUFFY: Your Honor, he was not represented  
6 by counsel in that proceeding.

7 THE COURT: That doesn't make it inadmissible.

8 MR. DUFFY: I appreciate that but I think it  
9 does touch on the persuasiveness.

10 THE COURT: Yes.

11 MR. DUFFY: Otherwise, we have no objection.

12 (Defendant's Exhibits K-1, K-2, and K-3 are  
13 received in evidence.)

14 MR. MARTIN: K-4, K-5, K-6, K-7, your Honor,  
15 are an exchange of correspondence in 1939 between Mr.  
16 Schmieder and the Reichsbank concerning his second fund,  
17 that fund that he kept in his name. Those are being  
18 offered, your Honor, primarily to show and underscore the  
19 fact that when it came to the property that he had  
20 legitimately reported and paid taxes on through the years,  
21 Mr. Schmieder was not afraid to report those, and had  
22 some disagreement with the Government over what should  
23 be done with those properties, that he was not cowed by  
24 the Nazis per se, but his fear arose all prior to the  
25 legal activity and that is the thrust on which I make this



1 rdrf 6

2 offer.

3 You may recall at the outset of the trial Mr.  
4 Duffy raised a point about a series of letters to which the  
5 first was missing. I think your Honor ruled at that point  
6 they would be received.

7 THE COURT: The letters between Schmieder and  
8 the bank?

9 MR. MARTIN: That's right.

10 THE COURT: Any objection?

11 MR. DUFFY: No, your HOnor. I believe there is  
12 another letter in that series that Mr. Martin hadn't offered.  
13 I assume he is going to offer it since he has it.

14 MR. MARTIN: That is K-10?

15 MR. DUFFY: K-9 or K-10.

16 MR. MARTIN: I was going to offer that also.  
17 I offer that as part of the same offer.

18 (Plaintiff's Exhibit K-4, K-5, K-6, K-7, K-10  
19 received in evidence.)

20 MR. MARTIN: I had marked earlier some others  
21 but I have decided not to offer them.

22 That completes my offer, your Honor, on this  
23 series.

24 THE COURT: You are not offering K-8?

25 MR. MARTIN: No.

1 rdrf 7

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2 Your Honor, that completes the offer of evidence  
3 that I am prepared to make at this time. We had agreed  
4 that the witnesses would be here by 2:00.

5 THE COURT: We will adjourn then until 2:00  
6 o'clock.

7 (Luncheon recess.)

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2 AFTERNOON SESSION

3 2:00 p.m.

4  
5 MR. MARTIN: May I proceed, your Honor?

6 THE COURT: Yes.

7 MR. MARTIN: I call Mr. Joseph Campbell.

8  
9 XXX

J O S E P H C A M P B E L L, called as a witness  
by the defendant, being first duly sworn, testified  
as follows:

10  
11  
12 XXX

MR. DUFFY: Your Honor, before Mr. Campbell  
testifies, I would just like to note my objection to what  
I anticipate his testimony to be from defendant's trial  
memorandum.

16 I think that events of the last several years  
17 of national notoriety have pretty much conclusively shown  
18 how ephemeral character testimony can be even where there  
19 are attorneys involved.

20 Secondly, I don't think the Federal Rules per-  
21 mit that type of testimony in this type of action, not-  
22 withstanding the Court's ruling.

23 THE COURT: How do they prohibit it?

24 MR. DUFFY: It says "character evidence is not  
25 admissible for"--

jgjp 2

Campbell

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1 THE COURT: Where are you reading from?

2 MR. DUFFY: From 404(a), your Honor, of the  
3 Federal Rules. The main heading of the section is "char-  
4 acter evidence not admissible to prove conduct."  
5

6 And I believe the exceptions here refer prin-  
7 cipally to proceedings of a criminal nature, and this  
8 obviously is a civil trial.

9 (Pause.)

10 THE COURT: Well, you are correct in your con-  
11 struction of the rules. However, it seems to me an appro-  
12 priate occasion for taking the exception to the rules be-  
13 cause the defendant Mr. Hall is in effect being charged  
14 with a criminal act.

15 MR. DUFFY: Your Honor, permit me to continue  
16 with my objection, then.

17 My third objection would be on the grounds of  
18 prejudice to plaintiff. You, yourself, have indicated, or  
19 at least it was your feeling that you expressed earlier,  
20 that whoever was successful here, the other side was going  
21 to appeal. And, of course, if plaintiff is successful, if  
22 the defendant then chooses to appeal, I think it would be  
23 extremely prejudicial to plaintiff to see all these state-  
24 ments, which I'm sure will be wonderful statements, about  
25 Mr. Hall's character. I doubt Mr. Martin would have called



jgjp 3

Campbell

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1 these gentlemen if they would be otherwise. To see that  
2 sort of statement in the record without having the back-  
3 ground and the flavor that your Honor might have in assess-  
4 ing it I think is highly prejudicial.  
5

6 THE COURT: That is the first time I've ever  
7 heard of an objection on the ground that the Court of  
8 Appeals is going to be prejudiced.

9 MR. DUFFY: I don't know who is going to read  
10 the record, your Honor. But I'm sure that these statements  
11 are going to be fine statements, and I think they are going  
12 to be unduly prejudicial, notwithstanding your feeling that  
13 this type of testimony is appropriate here.

14 THE COURT: I really think the Court of Appeals  
15 would be able to withstand the prejudice, if it ever gets  
16 to them.

17 MR. DUFFY: My fourth objection here--that is  
18 three out of three so far--is that I assume from the defen-  
19 dant's pre-trial memorandum that they are offering character  
20 evidence exclusively with respect to Louis Hall, Sr., and  
21 we have already heard this morning that there were other  
22 people involved in this transaction. I am not at all cer-  
23 tain that we will ever know how many people were involved  
24 in it, but we certainly know that William Graupner was in-  
25 volved in it, we certainly know that Mr. Hall himself was

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involved in it, Mr. Hall, Sr. appears to have been involved in it, Helen B. Dwyer appears to have been involved in it.

THE COURT: Only Hall, Sr. is alleged to have committed a fraud. The others may have helped him in it, but he is the one who is alleged to have committed it.

MR. DUFFY: I think it is broader than that.

THE COURT: I put you in a terrible box, don't I? Because if I let it in against you and then it is so prejudicial to the Court of Appeals that they affirm, you would be in a hell of a situation, wouldn't you?

MR. DUFFY: If it is your Honor's intention to take this testimony, might I offer this as an alternative?

Subject to the suitable qualification that these witnesses were aware of what Mr. Hall's reputation was at the time in question, I would then be willing to stipulate that they will testify that it was of high character.

THE COURT: Well, I don't know--

MR. MARTIN: I think the easiest thing to do, it is going to be very brief, is to just ask him the questions, your Honor.

THE COURT: Yes.



1 lb pm jgrf Campbell-direct

2 Q Mr. Campbell, would you tell his Honor something  
3 about your background, sir?

4 A Well, my background had been in public accounting  
5 in my early years, and in 1941 I went to Columbia University  
6 as an assistant treasurer of the trustees. And then  
7 in 1948 I became treasurer of the trustees and also vice-  
8 president of the University, which was two different  
9 jobs, which I won't explain unless you wish to have me  
10 explain.

11 Thereafter I was asked to go to Washington,  
12 and I became a member of the United States Atomic  
13 Energy Commission, on leave of absence from Columbia.

14 In the fall of 1954 President Eisenhower asked  
15 me to accept the job as Comptroller General, which I did.  
16 I took office in December 1954.

17 THE COURT: Would you be available for temporary  
18 service in New York right now?

19 THE WITNESS: I am now retired. I have had too  
20 many years of that.

21 Q When did you retire, sir?

22 A I was confirmed in March for the Comptroller  
23 General's job, in 1955, March, and retired on August 31,  
24 1965 due to illness.

25 Q And did you know Louis Hall, Sr.?

1 jgrf 2 Campbell-direct

2 A I did.

3 Q And how did you come to know Mr. Hall?

4 A Well, we were neighbors in New Canaan, and I first  
5 knew him as a friend, sailing and so forth. And we became  
6 very close friends.

7 Q When did you first meet Mr. Hall, as best you can  
8 recall?

9 A Oh, I think it was about 1937 or '36, I think.  
10 I knew his family also.

11 Q And over the years did you ever have occasion  
12 to have any business association with Mr. Hall?

13 A We had discussions of business. I had one  
14 occasion where he was counsel in a matter in which I also  
15 was involved as a consultant, and that was for about a  
16 year. I saw a great deal of him as a lawyer and as a friend.  
17 And then after, when I went to Columbia, we were in touch  
18 with each other frequently.

19 Q And over the course of your dealings with Mr.  
20 Hall, Sr., did you come to form an opinion of Mr. Hall's  
21 character, particularly with regard to the traits of  
22 honesty and integrity?

23 A I did, and I admired him greatly. He was a  
24 great friend, a firm friend and a man of great integrity.  
25 I saw him on occasions where it took a lot of courage.



1 jgrf 3 Campbell-direct

2 I sought his advice when I went to Columbia and he was  
3 truthful and honest in telling me what he thought I should  
4 do.

5 Q And in the course of knowing Mr. Hall, did you know  
6 other people who knew Mr. Hall?

7 A Yes.

8 Q Did you, sir, have occasion to have discussions  
9 with other people who knew Mr. Hall?

10 A Oh, yes.

11 Q From which you were able to determine what his  
12 reputation was for honesty and integrity?

13 A Yes. At the University we had a legal community,  
14 men of outstanding professional reputation, and I remember  
15 speaking of him as a friend to them, and I had the same  
16 response in almost every case, of their regard for him  
17 and for his reputation and his integrity.

18 MR. MARTIN: I have nothing further.

19 Mr. Fuller, who is the next witness, is sitting  
20 here in court. If you want to exclude him you may do that.

21 MR. DUFFY: No.

22 CROSS EXAMINATION

23 BY MR. DUFFY:

24 Q Mr. Campbell, just a few brief questions. You  
25 say you first met Mr. Hall in 1937?

1 jgrf 4 Campbell-direct

2 A Around that time, yes.

3 Q Could it have been after 1938?

4 A I don't think it is, no.

5 I think it was in that time, because I knew  
6 him a few years before I went to Columbia. I remember that  
7 very well.

8 THE COURT: You went to Columbia in what year?

9 MR. DUFFY: 1941.

10 THE WITNESS: April 1, 1941.

11 May 1, 1941.

12 Q It certainly is marginal, though, as to whether --  
13 it might have been 1938?

14 A I don't think so. I knew his family. I knew  
15 his family before I knew him. And the first acquaintance  
16 we had was sort of casual. There is no date that sticks in  
17 my mind, except it was sometime before I went to the  
18 University.

19 Q Did it take a while for your friendship with  
20 Mr. Hall to ripen, as it were?

21 A No, no. He wasn't that kind of a person. We  
22 became friends --

23 THE COURT: What kind of person was he? Did he  
24 play his cards close to the chest or was he open?

25 THE WITNESS: No, no. On the contrary. We had



1 jgrf 5 Campbell-direct

2 long talks about all sorts of things that he could talk  
3 about, and I felt the same way about him. A very unusual  
4 man.

5 Q Do you happen to have an opinion as to his character  
6 and reputation during the period between 1935 and March 30,  
7 1938?

8 A Well, I can't testify to that. I just knew him.  
9 I have the year 1937 in mind. But it may have been '38.  
10 I'm not sure.

11 Q You talked before of your knowledge of his  
12 character and his reputation. In what period were you  
13 referring to?

14 A I knew him from time to time until his death in  
15 the late '40s -- well, 1949.

16 Q It would have taken you a while to come to know him,  
17 though, I would assume.

18 A We were thrown pretty close together, thrown  
19 very close almost immediately.  
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Campbell-cross

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Q Now, when you mentioned before that you had discussions with Mr. Hall, would he ever discuss his personal problems with you?

A Well, for example. I recall he was associated with some company and they were interested in getting a good man into the company for the kind of work that I was particularly skilled in and he asked me recommendations. Things of that type.

Q Let me ask you this: Do you know what the subject matter of this action is?

A Just vaguely.

Q Well, what do you know the subject of this action to be?

A I heard it was fraud by sitting here.

Q Do you know the circumstances out of which the claim of fraud is arisen?

A No, I don't.

Q Did he ever discuss with you his arranging for a gift of property to his secretary?

A No.

Q Did he ever discuss with you any difficulties that his secretary might have had with the Alien Property Custodian as a result of that?

A No.



1 rdsjp 2

Campbell-cross

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2 Q Did he ever discuss with you his involvement  
3 in any of those transactions?

4 A Nothing of that type, no.

5 MR. DUFFY: Thank you, Mr. Campbell.

6 MR. MARTIN: I have nothing further, your  
7 Honor.

8 (Witness excused.)

9 E D W A R D L. F U L L E R, called as a witness  
10 on behalf of the defendant, after being duly sworn,  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MARTIN:

14 Q Mr. Fuller, directing your attention to the  
15 year 1938 what was the position that you held or obtained  
16 that year?

17 A I was president of the International Salt Com-  
18 pany.

19 Q And how long did you remain the president of  
20 the International Salt Company, sir?

21 A Until 1968.

22 Q Was the International Salt Company a company  
23 listed on the New York Stock Exchange?

24 A It was.

25 THE COURT: It still is, isn't it?

rdsjp 3

Fuller-direct

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THE WITNESS: No. It has been combined with a couple of other companies.

THE COURT: What is it now?

THE WITNESS: Akzona.

Q Did you know Louis Hall, Sr.?

A I did, yes.

Q And how did you come to know Mr. Hall, Sr.?

A Well, I became associated with the International Salt Company in 1927, and Mr. Hall was then, as a member of the firm of Putney, Twombly & Hall, our general counsel. And I knew him from that time as an officer of the company, as legal counsel, and as a director of the company until the time of his death.

Q Was Mr. Hall a director of the company, sir?

A Yes, sir, he was.

Q Was he an officer of the company?

A I believe he was a vice president.

Q As president of International Salt Company and he being the general counsel, did you have a great deal of contact with him?

A I did.

Q And as a result of your contacts did you ever see Mr. Hall socially?

A I have, yes. I did.



rdsjp 4

Fuller-direct

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Q As a result of your contacts with Mr. Hall, were you able to form an opinion as to his honesty and integrity?

A Very definitely, yes.

Q What was your opinion of that?

A I always had the greatest admiration for him and for his honesty and integrity, if you want to put it that way.

Q During the course of time that you knew Mr. Hall did you know other people who knew Mr. Hall?

A Yes.

Q And did you have occasion to have discussions concerning Mr. Hall with other people that knew him so that you came to know his reputation for honesty and integrity?

A Yes, definitely.

Q What was his reputation for honesty and integrity, sir?

A Of the highest.

MR. MARTIN: I have no further questions of Mr. Fuller.

CROSS EXAMINATION

BY MR. DUFFY:

Q Mr. Fuller, beyond what you heard me inquire of Mr. Campbell about, do you have any knowledge of the facts of this action?

1 rdsjp 5

Fuller-cross

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2 A No, sir, I do not.

3 Q Did you have discussions with Mr. Hall about  
4 any personal problems--

5 A You mean Mr. Hall's?

6 Q Did Mr. Hall confide in you on any occasion as  
7 to his personal problems?

8 A No, other than social discussions that I have  
9 had with him. No personal problems.

10 Q Did he ever talk to you about his arranging for  
11 a gift of property to his secretary?

12 A No, sir.

13 Q Did you know his secretary?

14 A I knew of her. I had met her and I talked with  
15 her on the phone occasionally when I had occasion to call  
16 Mr. Hall.

17 Q Do you recall her name?

18 A Mrs. Dwyer.

19 Q You never heard from Mr. Hall or Mrs. Dwyer  
20 that Mr. Hall had arranged for a gift of property to Mrs.  
21 Dwyer?

22 A No, sir, I never knew anything about it.

23 Q Did you know that Mrs. Dwyer was involved in  
24 proceedings before the Alien Property Custodian relative  
25 to a claimed violation of the Trading With the Enemy Act?



rdsjp 6

Fuller-cross

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A No, sir.

C Mr. Hall never discussed anything about that with you?

A No, sir, he didn't.

Q Did you have an opportunity to observe Mr. Hall in his capacity as a businessman as compared to his capacity as a lawyer? I note he was vice president of this corporation.

A Very definitely. He was very active in the Salt Company matters, primarily from the legal standpoint. But he got into other areas of the business too.

Q Did he make management-type decisions as compared with legal decisions?

A As a member of the board of directors, yes.

Q How would you characterize his management decisions?

A I would say they were very astute, very carefully thought out.

Q Would you call him a hard bargainer or a sharp businessman? Can you use some characterization for the type of manager he was?

A I would say he was a very thorough person. He thought things out very carefully before he made a decision. He didn't jump to conclusions and he was--I don't know just

rdsjp 7

Fuller-cross

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1 how to put it. Thoroughness I would say would be his major  
2 characteristic in business decisions.  
3

4 THE COURT: What kind of man was he to talk to  
5 in coming to a conclusion? Was he a fellow that played his  
6 cards close to his vest or would he tell you what he was  
7 thinking and why he was thinking it?

8 THE WITNESS: I think I know what you are getting  
9 at. He was not the kind of person who played his cards close  
10 to the table. Among his business associates he came out and  
11 expressed himself why he thought of such a thing, why he  
12 came to such a conclusion and put all his cards on the table.

13 Q How do you think Mr. Hall would react if he  
14 were called upon to make a management decision in a situation  
15 where he could have accomplished an attractive business deal  
16 for the Salt Company by taking advantage of a situation?

17 Would Mr. Hall be the type of man who would take  
18 or look to complete that type of transaction or would he  
19 pass it by because he would not want to take advantage of  
20 a situation?

21 A He would not accept or consider anything that  
22 was unethical.

23 Q I am not suggesting anything of an unethical  
24 nature.

25 THE COURT: That is what the question seemed to



1 rdsjp 8

Fuller-cross

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2 suggest to me.

3 MR. DUFFY: Let me rephrase it then, your Honor.

4 Q Mr. Hall as a businessman may have been pre-  
5 sented with opportunities where, because he had resources  
6 and other people did not, he might be able to drive a hard  
7 bargain.

8 Were you aware of any situations where the Salt  
9 Company was involved in a transaction where that might have  
10 occurred?

11 A No, I wasn't. I never have been. If I under-  
12 stand your question correctly. I'm not sure that I do.

13 Q I am trying to phrase it in a particular way  
14 and I guess I am not being too successful at it.

15 THE COURT: He wasn't a bleeding heart socially,  
16 I take it?

17 THE WITNESS: No, definitely not.

18 Q Did you ever know Helen Dwyer socially?

19 A No, sir.

20 THE COURT: You talked to her on the telephone,  
21 I assume?

22 THE WITNESS: Yes. I met her in the office as  
23 Mr. Hall's secretary.

24 MR. DUFFY: That is all.

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rdsjp 9

Fuller-redirect

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REDIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Duffy asked you of specific instances of Mr. Hall's conduct. Do you recall an incident where the proposition being proposed was whether or not the Salt Company should acquire some other company and you sought Mr. Hall's advice on that?

A Yes, I do.

Q Do you recall suggesting to Mr. Hall that perhaps the thing to do in that situation was let the Government litigate it if they wanted, but for the company to go ahead with the deal; do you recall that?

A Yes.

Q What did Mr. Hall tell you at that time?

A He said under no circumstances would he consider handling a situation of that nature knowing or feeling in his own mind that the proposition would not be acceptable to the Government.

MR. MARTIN: That's all.

RECROSS EXAMINATION

BY MR. DUFFY:

Q Was this a potential antitrust violation that concerned Mr. Hall?

A Mr. Hall felt that it could be, could have been



rdsjp 10

Fuller-recross

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had we gone ahead with it.

Q And was Mr. Hall a member of the board of directors or someone who would have made the management decision to go ahead with it?

A He was.

Q And did he discuss with you the possibility that managers of the corporation could be potentially liable for criminal sanctions if they were successfully prosecuted for a violation of the antitrust laws?

A He did.

Q Was that one of the factors that motivated his advice to you?

A I don't quite understand that question. Would you rephrase it?

Q Did Mr. Hall give you that advice because he was concerned--

THE COURT: How does he know why he did it? That's one of the things he mentioned, the possibility of criminal sanctions?

THE WITNESS: That's correct.

MR. DUFFY: No further questions.

MR. MARTIN: Nothing further, your Honor.

(Witness excused.)

MR. MARTIN: I have nothing further, your Honor.

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320A

2 THE COURT: Mr. Duffy.

3 MR. DUFFY: We would like to call Mr. Hall in  
4 rebuttal.

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2 L O U I S H. H A L L, J R., resumed

3 the stand and testified further as follows:

4 DIRECT EXAMINATION

5 BY MR. DUFFY: (Continued)

6 Q Mr. Hall, do you recall ever making the statement  
7 to me or to anyone else that this gift of property turned  
8 out to be a nightmare for Helen Dwyer?

9 A Yes, I think I remember reading that in my  
10 transcript in the probate proceeding.

11 Q Would you explain to us the reason why she felt  
12 it was a nightmare, if you know?

13 THE COURT: She felt or he felt?

14 I didn't get your question.

15 MR. DUFFY: He said that Mrs. Dwyer felt it was  
16 a nightmare.

17 THE COURT: I thought that was his characteriza-  
18 tion but it is her quotation of her characterization, is  
19 that it?

20 MR. DUFFY: Yes.

21 A Well, I think the seizure -- first the blocking  
22 by the Treasury Department, next the vesting by the alien  
23 property custodian, both of which really insinuated that  
24 this was not her property and which meant that she had  
25 to struggle to get back her own funds in both cases, with

1 rdrf 2

Hall-direct

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2 all the consequent troubles that go with litigation, and  
3 that constituted the headache or nightmare, whatever you  
4 want to call it.

5 Q I also assume that she was aware that Kurt  
6 Schmieder was expressing an interest in her whereabouts  
7 and her administration of this property?

8 A That was well after, I believe, the alien property  
9 custodian suit.

10 Q Was this all part of that nightmare?

11 A I don't know that it was.

12 Q She was obviously concerned about people inquiring  
13 into the property. That September 22nd letter that we  
14 looked at on your prior testimony where she wrote the various  
15 transfer agents instructing them not to give out her  
16 whereabouts is an indication of that, isn't it?

17 MR. MARTIN: I interpose an objection that it is  
18 not proper rebuttal. It seems we are going back over what  
19 counsel has covered before.

20 THE COURT: I don't see what relevance it has  
21 why she thought it was a nightmare.

22 MR. DUFFY: There has been some suggestion here,  
23 your Honor, that Mrs. Dwyer was a very independent woman  
24 who made up her own mind.

25 THE COURT: She made up her mind that it was a



rdrf 3

Hall-direct

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nightmare.

MR. DUFFY: Actually, Mr. Hall seems to be very much of the opinion that because she accepted this property it imposed terrible burdens on her. Now I want to show that those burdens continued right up to the time of her death, and in actual fact one of the persons upon whom she had to rely in order to meet the burdens of overcoming her problems was Mr. Hall.

THE COURT: What does that prove? Assuming that is true, what does it prove?

MR. DUFFY: I think that the prior testimony was offered to rebut any presumption of undue influence. As a matter of fact, I think Mr. Martin stated that he was showing you the will so that you could conclude -- he stated to the effect that he was showing you the draft of a will so that you would be able to conclude that she arrived at those provisions of her own choice, that Mr. Hall had no influence on her.

THE COURT: Go ahead. I don't quite see where we are getting but go ahead.

Q Mr. Hall, after Mrs. Dwyer received the property in settlement from the U. S. Government action in 1951, were there any other claims made to this property, were there any other problems that Mrs. Dwyer had with this

rdrf 4

Hall-direct

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property other than claims that may have been asserted by Kurt Schmieder?

A None that I recall now.

Q Now, Mrs. Dwyer has previously stated in her TFR report and in other documents that she didn't know the reason why she got the gift, the circumstances under which she got it.

A Did she make such statements?

Q I believe she did. I believe they are in the record of these proceedings. Now, you were one of the people who was instrumental in that transaction under which she got that property; is that correct?

MR. MARTIN: I object to the characterization.

THE COURT: He can say no if it is correct.

A I would say no the way I construe, "instrumental." You already know what I did. I have told you.

Q And you provided her with a defense to Government claims for nine years?

A You were talking about the date of the gift, were you not?

Q Didn't you assist her in the problems with the alien property custodian from 1942 right on through the time she received that property in settlement from the Government in 1951 or '52?



rdrf 5

Hall-direct

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1  
2 A No, sir. I believe that I started assisting her  
3 in her problems with the alien property custodian after my  
4 father's death when the lawsuit had been started in Washington  
5 to recover it.

6 Q Mr. Hall, that is not my recollection of what  
7 the record of this proceeding shows.

8 A I can't help it.

9 Q Isn't it a fact that you were involved in these  
10 transactions on Helen Dwyer's behalf throughout the  
11 entire period, right from the very beginning when she got  
12 the property, right up through the time that she received  
13 the property back from the Government?

14 A It is not.

15 Q Didn't you make trips to Washington, write  
16 letters and do research and prepare affidavits and memoranda?

17 A Only after the litigation had started, I believe  
18 after my father's death, which was in 1949.

19 Q Doesn't the Sanborn affidavit have services --

20 THE COURT: Well, there is no contest that he  
21 was her lawyer and adviser and professional confidant.  
22 What more are you trying to prove?

23 THE WITNESS: From the date of my father's death,  
24 sir.

25 THE COURT: From the date of his father's death.

rdrf 6

Hall-direct

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What more are you trying to prove?

MR. DUFFY: Your Honor, I am trying to show that contrary to the impression that Mr. Martin would like to leave, that Helen Dwyer had a very deep need to rely upon Mr. Hall in order to sustain her title to this gift.

THE COURT: Well, we know that she needed a lawyer and Mr. Hall was it.

MR. DUFFY: She needed a lawyer who had knowledge of the facts.

THE COURT: It is always handy to have a lawyer who knows what he is doing.

(Laughter)

MR. DUFFY: This particular lawyer was unique to all other lawyers.

THE COURT: What does it prove? She was being sued by the Government. When you are sued by the Government you are in trouble. Everybody knows that and you need a lawyer and she had one.

MR. DUFFY: I'll drop that line then, your Honor.

I have no further questions of Mr. Hall.

MR. MARTIN: I have none, your Honor.

(Witness excused.)

MR. DUFFY: I would like to introduce two documents



1      rdrf 7

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2      that come from the same file as Mr. Martin's exhibits  
3      K-4 and following, as 25-A and 25-B. These are statements  
4      taken by the Government in their investigation of Kurt  
5      Schmieder in connection with his claim for return of  
6      vested property. This is his individual claim for return  
7      of vested property.

8                      THE COURT: Statements of whom?

9                      MR. DUFFY: 25-A is a statement from Alfred  
10      Proehl, and it is to the effect that Mr. Schmieder was  
11      an opponent of the party and that his business suffered as  
12      a result of that.

13                     MR. MARTIN: I have seen it.

14                     MR. DUFFY: And the statement from Mr. Horstmann,  
15      to the same effect, that the owner of the firm was known to  
16      the party officers as anti-Nazi. I am offering those to  
17      rebut Mr. Martin's assertions that Mr. Schmieder was not  
18      persecuted in Germany.

19                     THE COURT: What differences does it make whether  
20      he was persecuted or wasn't persecuted in this action?  
21      That may be relevant if you win here and the Government comes  
22      at you.

23                     MR. DUFFY: Mr. Martin offered a series of  
24      correspondence between Schmieder and the Reichsbank with  
25      the comment that here he is arguing with the Nazi Government,

1 rdrf 8

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2 and I would like to show --

3 THE COURT: I didn't quite see what relevance  
4 those papers have and I don't see what those have, but --

5 MR. MARTIN: I think these are far less relevant,  
6 your Honor. These are two statements in 1958 that Mr.  
7 Schmieder was not anti-Nazi during the war. By 1958  
8 there wasn't a pro-Nazi left in Germany and I think that  
9 these are irrelevant and totally hearsay.

10 MR. DUFFY: Your Honor --

11 MR. MARTIN: I'm sure Eichman could have gotten  
12 such letters.

13 THE COURT: They may not be persuasive but they  
14 are relevant on the same issue that you raised.

15 MR. DUFFY: If Mr. Martin would feel happier I  
16 would call character testimony.

17 (Plaintiff's Exhibits 25-A and 25-B are  
18 received in evidence.)

19 MR. DUFFY: One other document, your Honor. We  
20 have searched the court files for defendants reply memorandum  
21 on an early motion to dismiss, and the files don't appear  
22 to have that document in them at this point in time. I  
23 would like to introduce the document, or our copy of the  
24 document so it is part of the court record of these  
25 proceedings.



rdrf 9

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2 I am introducing this to make the record complete  
3 for one thing. Secondly, because it contains a statement  
4 of fact presumably drafted by Mr. Owen and/or Mr. Turchin  
5 at a time when Mrs. Dwyer was still alive. I am just  
6 quoting relevant portion here. It says, "The fact is  
7 plaintiff did have relatives here in the United States  
8 at that time and they all, for various reasons, refused to  
9 accept the gift. Defendant herself was reluctant to accept  
10 it."

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2 THE COURT: Any objection to that statement?

3 MR. MARTIN: I object, your Honor. I don't  
4 know that this is true or not. I didn't draft it. I  
5 don't concede that it is binding --

6 THE COURT: It has been judicially hallowed.  
7 How can you dispute it?

8 MR. MARTIN: That is true, your Honor. But  
9 even judges make mistakes before they get to be  
10 judges. Never afterwards.

11 MR. DUFFY: In any event, your Honor, that was  
12 part of the record in this proceeding at one point.  
13 It is necessary to make the record complete again.

14 (Plaintiff's Exhibit 41 for identification  
15 received in evidence.)

16 MR. DUFFY: For the Court's information, that  
17 memorandum was filed in connection with this motion.

18 THE COURT: The motion is already part of the  
19 record.

20 Is that all the evidence?

21 MR. MARTIN: I have nothing further.

22 MR. DUFFY: Your Honor, nothing further.

23 THE COURT: All right.

24 MR. MARTIN: May I renew my motion to dismiss,  
25 your HOnor, which I am sure your Honor will reserve on,



1 jarf 2

2 so the record is clear?

3 THE COURT: Motion reserved.

4 Defendant moves to dismiss and plaintiff moves  
5 for judgment in his favor. Decision on both motions is  
6 reserved.

7 (Discussion off the record.)

8 THE COURT: Is that agreeable, two weeks?

9 MR. MARTIN: Absolutely.

10 THE COURT: Two weeks for the initial brief  
11 and one week for the reply brief. And we are going to start  
12 working as soon as we get the initial brief.

13 MR. MARTIN: Fine, your Honor.

14 Could we have about five minutes here to make  
15 a brief oral presentation while the facts are somewhat  
16 clearer?

17 THE COURT: Yes, that's fine. And before you do,  
18 let me, exposing my ignorance perhaps, tell you just how  
19 I see the question at this moment.

20 It seems to me that it will probably be  
21 established by the plaintiff that Mr. Hall, Sr. knew  
22 (a) that this was Schmieder's money and (b) that he was  
23 ultimately acting for Mr. Schmieder in doing this.

24 I am just saying it seems to me from what  
25 I've heard. The plaintiff will probably hear the

jarf 3

burden of proving that because obviously it is his burden.

Then the money concededly was given to Mrs. Dwyer. If it had been given to Amherst University or almost anybody else, that would be the end of the case because it seems perfectly clear to me, again just from what I've heard about the evidence in the case, from what everybody has been saying about it, that Schmieder is coming into court with unclean hands in that the purpose of his giving the gift to Mrs. Dwyer, if we assume the rest of his case, was to defeat the United States Alien Property Custodian Law.

At least his initial purpose may have been only to defeat the Government of Germany laws. He may not have been thinking of the United States Alien Property Custodian Law at the time he made the gift. But he was certainly, I would think, I will find, on the basis of what I've heard talked about, that by the time the United States Alien Property Custodian or the Attorney General, whoever he was at the time, got into the act, that Schmieder knew what the score was and was trying to beat the United States Government. And at that point, if not earlier, he acquired, for want of a better word, what I would call unclean hands.

However, if Mrs. Dwyer was acting as Mr.



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2 Hall's nominee in effect, then a gift to Mr. Hall in effect  
3 would have two consequences, as I view the law, subject  
4 to correction, obviously. One consequence would be that  
5 it would make unavailable the defense of unclean hands  
6 in that, as I view the law, a paramount consideration  
7 was the integrity of the Bar, and therefore a lawyer  
8 who advises a client to act in a certain way and benefits  
9 by that, can't claim unclean hands of the client resulting  
10 from that action. And the second effect such a finding  
11 would have would be to shift the burden to Mr. Hall  
12 to prove that his conduct was correct. Because, I understand  
13 it, where a lawyer accepts a gift -- and I'm assuming  
14 the gift to Mrs. Dwyer was a gift to him -- where a  
15 lawyer accepts a gift from a client, where he has got to  
16 justify it, that there wasn't any over-reaching, the burden  
17 of proof shifts to the lawyer.

18 So it seems to me that a crucial question in  
19 the case is: Was Mrs. Dwyer acting independently or acting  
20 for Mr. Hall in accepting that gift?

21 And on that issue obviously the plaintiff has  
22 the burden of proof.

23 I've expressed skepticism on Mr. Hall, Jr.'s  
24 claim of ignorance as to what was going on at the time.  
25 I must say that nothing has dispelled my skepticism  
in that respect. Indeed, the character witnesses

jgrf 5

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reinforced it because they did not, to me, portray a man who would have kept his son in the dark, let alone his law associate -- or perhaps the other way around, his law associate, let alone his son -- during the transactions which were disclosed.

However, exactly where that gets the plaintiff I'm not sure except insofar as Mr. Hall, Jr. should have been or can be shown to have been in a position to provide an answer to the very puzzling question with which I started out, why did a man of Mr. Hall's acumen put his client Mr. Schmieder and his secretary, Mrs. Dwyer, in a situation which was obviously fraught with danger?

But, as I say, my skepticism as to Mr. Hall, Jr.'s profession of ignorance would only seem relevant to the extent that I find he should or could have provided an answer to that question, and from his failure to give it, if I find he should have been able to prevent it, I suppose I can draw inferences.

Now, as I said, none of those are rulings. I am merely exposing my ignorance.

MR. MARTIN: Your Honor, you have given us some indication where you think we are going. While it is all fresh in my mind as to how the oral presentation should go, I would like to do that as soon as Mr. Duffy completes



1 his.

2  
3 THE COURT: Mr. Duffy, will you briefly state  
4 your position now or adding to what you said before.

5 MR. DUFFY: I would prefer to hear Mr. Martin  
6 and sum up following him.

7 MR. MARTIN: Does that, under the new rules,  
8 give me a right to rebut, your Honor, if I go first?

9 THE COURT: Under the new rules you can rebut.

10 MR. MARTIN: Fine. Then I'll gladly take it.

11 Your HONOR, obviously there is a lot in the  
12 record that your Honor has not had a chance to read and  
13 I don't intend to belabor you by quoting extensively  
14 from that. I do want to have the opportunity to address  
15 the Court because of your stated skepticism of Mr. Hall,  
16 Jr.'s testimony. I think that there are a couple of  
17 things to be said on that.

18 Unfortunately, we are all somewhat limited  
19 by our own experience, and your Honor indicated your  
20 experience was that you worked for a lawyer who told you  
21 what everything was about. My experience is somewhat  
22 different. I suppose I shared an experience with Mr.  
23 Hall and Mr. Graupner, both of whom testified.

24 I worked for my father, and I have had  
25 occasion as a lawyer to see -- I don't know if you recall

1 jgrf 7

2 him -- Menahem Stim, who practiced for some years.

3 I argued my first case against Mr. Stim's son Allan,  
4 with his father sitting at his side.

5 And certainly my experience, both personal  
6 and in observation, is that a father usually treats his  
7 son with somewhat less equality than he would treat someone  
8 of his son's age; that a father often never loses the fact  
9 that that is his child.

10 And that has been my experience with my father,  
11 I think it is the experience with a lot of people, and that  
12 where perhaps another lawyer with an associate would  
13 have been treated perhaps more as a grownup, that  
14 doesn't necessarily follow with a father.  
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2           The other thing I want to point out in that  
3 regard is that Mr. Hall, Sr.'s own statements indicate  
4 that as of the time of the gift he did not know that it  
5 was Schmieder's property, that they had come to him through  
6 Mr. Graupner really, that his only conversation with  
7 Schmieder was in 1935, when Schmieder talked generally  
8 about setting up a corporation, a personal holding corpora-  
9 tion, and ultimately Mr. Graupner came back and said to  
10 him that Jenny Bochman wanted to set up a personal holding  
11 corporation.

12           Thereafter, when he was told about the gift,  
13 he was not told that Schmieder wanted to make the gift--  
14 and these are his statements, they are in evidence, and  
15 you will obviously, I am sure, want to read them--that he  
16 assumed, because Schmieder had first talked about the cor-  
17 poration to him and that Stoneleigh followed, he had some  
18 feeling, and indeed at one point in his transcript he was  
19 being asked about the name of the German individual who  
20 first talked to him about Stoneleigh, and he said, "Well,  
21 I had some reluctance because it is possible he was the  
22 one who talked to me first, there may be some attorney-  
23 client privilege here and I'm not sure if I can disclose  
24 it, but if you think it is important I will tell you."

25           Then he identified Schmieder on the record.

1 jgjp 2

2 But he had, you know, some question that there  
3 was some attorney-client privilege there. But basically  
4 his conduct with Schmieder had been rather brief.

5 The other thing that I would like to point out  
6 in this whole aspect of the thing, and particularly inso-  
7 far as you discussed Mr. Hall, Jr.'s credibility, is that I  
8 think another aspect that might indicate, on reflection,  
9 that perhaps this was not something that would have been  
10 discussed in great detail with Mr. Hall, Jr. by his father  
11 is that this was a situation--and let's accept my view for  
12 a moment--where Mr. Hall, Sr. decided that it was going to  
13 be a windfall, that there was going to be a windfall on  
14 somebody, and here was Helen Dwyer who was an orphan, who  
15 had had a tough life, and here is an opportunity to do some-  
16 thing nice for Helen. Let's assume that state of facts for  
17 a minute.

18 We've all worked in offices and we all, I think,  
19 are familiar with rumors and people being personally curious  
20 about the affairs of other people, and it does not seem  
21 strange to me that Mr. Hall, Sr. would have decided that it  
22 was a nice opportunity to see something nice happen to  
23 Helen Dwyer, who is also concerned that there would not  
24 be a lot of talk about the office about this whole thing  
25 and she wouldn't want, and that comes out, I think, from



jgjp 3

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2 Mrs. Nugent, her affairs brandied about, and he didn't want  
3 her affairs brandied about.

4 So that there would perhaps be in this situation  
5 another factor that would go into having perhaps less con-  
6 versation among people and, even though his son was an  
7 associate in the firm, would have some more desire to keep  
8 this thing out of the firm rumor mill, everybody talking  
9 about what Helen Dwyer was doing.

10 Mr. Hall, Sr.'s purpose was to make a gift to  
11 her, to give her something, but not to make her the subject  
12 of conversation in the office. So these factors simply  
13 exist and go with everything else to perhaps provide a  
14 reason why discussions that we might think would have  
15 occurred perhaps did not.

B2 16 The other thing is the question of recollection.  
17 We are dealing with events that are now 40 years old, the  
18 basic events, and I think whether or not Herman Graupner  
19 or Lou Hall had any casual discussion about wasn't this  
20 nice that Helen Dwyer got this windfall is something that  
21 would not stand out in anybody's mind today. They are both  
22 deeply immersed in all these facts by this time. They  
23 have both been questioned about all these facts extensively  
24 and, on Mr. Hall's credibility, there is no reason for  
25 him to deny today knowing it was Kurt Schmieder's property

jgjp 4

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particularly in '38, when he admits he was told sometime thereafter.

He has, as any of us who have tried to recall events--I've testified as a witness, in fact--had the problem of pulling out of a stream of recollection of 30, 40 years precise time you know fact A and fact B, although today you know the whole alphabet. I think all of those go to those questions of credibility.

The other thing I wanted to add, and I think the character witnesses are important, is that the question that is important here is one of motive.

It seems to me, as I said in the opening, that for the plaintiff to prevail he has got to prove that Mr. Hall, Sr., Mr. Hall, Jr., Helen Dwyer and Herman Graupner were engaged over a course of 20 some odd years in an on-going conspiracy to defraud Mr. Schmieder, because that would have started back at the time of the transfer with Mr. Hall, it would have involved perjury by Mr. Graupner, Sr., Mr. Hall, Sr. and Mrs. Dwyer in the Alien Property proceeding, it would have involved Herman Graupner and Louis Hall, in this correspondence we see coming up in 1956, sitting down and saying, "We are going to lie about this and deceive this man."

That's what you have to have for the plaintiff



jgjp 5

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1 to be telling the truth here. All these people have to  
2 commit perjury and commit fraud. I think that's why the  
3 character testimony concerning Mr. Hall, Sr. is important,  
4 because, according to the plaintiff's version, he is the  
5 ringleader of this conspiracy.  
6

7 The question is, what is the motive, what is  
8 Mr. Herman Graupner's motive, to get involved in this?  
9 He is a man of independent means. He simply responded as  
10 he knew the facts to be.

11 Mrs. Dwyer would have had to be a perjurer be-  
12 cause she knew, according to the plaintiff, at the time she  
13 made these affidavits, that there were strings attached,  
14 that she was only a nominee of Hall, if that's the theory  
15 now.

16 THE COURT: Well, Mrs. Dwyer--

17 Well, I won't make any comment.

18 MR. MARTIN: I think she would have had to  
19 know, on his theory, that she was a nominee of Hall.

20 THE COURT: Yes.

21 MR. MARTIN: And she said not. She said the  
22 gift was to her and it was absolute and she has sworn  
23 to that in an affidavit, and it seems to me that there  
24 is a whole question of motive here that is unanswered.

25 As I think your Honor picked up during the

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2 questioning of Mr. Hall, Jr., Mr. Hall was a successful  
3 man, a man of substance who obviously left a substantial  
4 estate, a man who had a very high reputation. There just  
5 doesn't seem to be any motive for him to really set out  
6 to embark on a scheme to defraud or to get his hands on this  
7 money at some time for his children.

8           So I think these are the factors that I would  
9 ask your Honor to consider. I think they go to what this  
10 case is about, and it is hard to--

11           THE COURT: How do you explain his having ex-  
12 posed Mr. Schmieder and Mrs. Dwyer--she got a benefit from  
13 it. Wasn't that an obvious risk he was exposing them to?

14           MR. MARTIN: Exposing Schmieder to?

15           THE COURT: Yes.

16           MR. MARTIN: Your Honor, I think, again, you  
17 haven't had the benefit of reading Mr. Hall's statement.  
18 Of course, the other thing is, as I point out in my memo,  
19 we are looking back with tremendous hindsight at this thing  
20 and we have seen the whole history play out.

21           THE COURT: Yes. And that history wasn't so  
22 different from the World War I history.

23           MR. MARTIN: Yes. But what I was getting to  
24 was that in his statement, which you will read, there was  
25 at some point, and I forget the precise context in which it



1 jgjp 7

2 came up--he said that they first came to him and said they  
3 wanted some way to conceal ownership here.

4 THE COURT: That is what everybody wanted to  
5 do in those days.

6 MR. MARTIN: And he couldn't see how it could  
7 be concealed. But at some point he was talking about, "Didn't  
8 you foresee this problem coming up, the Alien Property  
9 problem?"

B3 10 And he said, "No. Things were different at  
11 that point but I sort of wasn't thinking this far ahead."  
12 That's in his statement, in 1938.

13 I happened to be reading something I meant to  
14 read for a long time, Winston Churchill's Gathering Storm,  
15 and he is writing about that period, and I think that it  
16 was not quite as clear in '38 where things would ultimately  
17 go.

18 I don't think that Hall, Sr. was focusing on  
19 the problem of the Alien Property Custodian. I think he  
20 was focusing on the problem that, as somebody said, "I want  
21 to hold this property in the United States and I don't  
22 want it disclosed to anybody." And his reaction to that  
23 was, "You can't do that, because you have to report these  
24 things, and I won't be part of anything, I wouldn't handle  
25 it, if that had to be done. Whoever has gotten himself in

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2 such a problem that they really want to be rid of the thing,  
3 you can make a gift to somebody and then it doesn't have  
4 to be disclosed."

5 I don't think that he was so farsighted that he  
6 was thinking at that time of an Alien Property proceeding  
7 in the future. I mean, his statement does indicate that,  
8 again, he did not think in that time to the Alien Property  
9 proceeding.

10 And the interesting thing about his statements  
11 too is that he asked him something about, "Why didn't you  
12 take it?" And he said that from what he had learned from  
13 Mr. Graupner that the person who had this property was in  
14 some distress arising out of the German property tax laws  
15 and that he did not want to take advantage of that and he  
16 just didn't want to get involved and he just thought that  
17 Helen Dwyer was a person who had had a tough life and, if  
18 a windfall was going to fall on somebody, she was a nice  
19 person to have it.

20 THE COURT: Has anybody ever figured out why  
21 neither Mr. Schmieder nor his sister had anybody in the  
22 United States they wanted to benefit?

23 MR. MARTIN: I think a twofold thing. My recol-  
24 lection of what is in our record as opposed to a lot of the  
25 things I have seen in the proceedings--I think it is in our



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record--as to Schmieder himself is that apparently his  
concern was not to have a traceable interest back to him.

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As to Lockman, she apparently was also having some of her own problems. I think this is in Mr. Hall's statement because Mr. Hall, Sr. went to her in 1939 because she wouldn't sign this gift tax and said would she please sign this gift tax return, that we need this to complete the gift. Apparently she had some extended discussions. He said that you asked me to act as your lawyer to do this and I need this for you to complete what you told me to do, and she would not sign the gift tax return at that time.

THE COURT: Did she sign a power of attorney?

MR. MARTIN: She had signed originally for Stoneleigh and that had been used to file a gift tax return, but the law apparently at the time, and it may still be, required that the donee had to finally execute it themselves.

THE COURT: Donor.

MR. MARTIN: Donor. I never get it straight.

In any event, she said she was in divorce proceedings in Switzerland and she had filed affidavits that she hadn't any interest in property outside of Switzerland, or something to that effect. She had filed affidavits in her own proceedings and she didn't want to have any involvement with this property either, and that's why she wouldn't sign the gift tax return.



rdsjp 2

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That is probably the reason why both parties, Schmieder and Bochman, didn't want the consequence of showing up that they had a traceable interest.

THE COURT: What did they finally do about the gift tax return?

MR. MARTIN: Apparently it was filed simply under the power of attorney, never signed, and IRS never did anything about it. In fact, I think Mr. Hall, Mr.'s statement said that he always expected IRS to come after us with some kind of penalty, but they never did. We filed what we could and that was it.

THE COURT: Why couldn't he give it to Amherst?

MR. MARTIN: I suppose he could have. As I say, I think perhaps he was playing God a little, that here was a lady who has had it tough and maybe she can have something nice for a while.

Thank you, your Honor.

MR. DUFFY: Your Honor, obviously we view things very much differently. As your Honor pointed out during the course of the trial an extraordinary thing happened back in--

THE COURT: How do you figure Graupner's motive? What was the motive?

MR. DUFFY: Grupner, Sr.?

1 rdsjp 3

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2 THE COURT: Both Sr. and Jr. What did they get  
3 out of this?

4 MR. DUFFY: I know it is not in the record be-  
5 fore you, your Honor, but it is an easily documented fact  
6 that Grupner, Sr. had extensive involvements with the  
7 Schmieder family. He was selling agent for the family  
8 corporation and continued in that position after Mr. Hall  
9 got involved with the corporation.

10 THE COURT: Why does that give them a motive  
11 to defraud Mr. Schmieder?

12 MR. DUFFY: I prefer not to speculate as to why.

13 THE COURT: Don't I have to find that he and  
14 his son engaged in a criminal conspiracy to defraud Mr.  
15 Schmieder? I am not saying that is an impossible thing to  
16 find, but one usually looks for motive in view of that.

17 MR. DUFFY: I don't think your Honor has pro-  
18 posed one sequence of events or one sequence of findings  
19 that you would have to make in order to find recovery for  
20 plaintiff. I don't think that is the only finding or the  
21 only sequence of events that would permit that result.

22 THE COURT: According to your theory, when Mr.  
23 Schmieder surfaced and wanted his money back the two Graup-  
24 ners, according to your theory, conspired with the Halls  
25 to defraud him of it.



1 rdsjp 4

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2 MR. DUFFY: I didn't say the two Graupners. Mr.  
3 Graupner, Sr. died in 1954. That letter that we introduced  
4 where he wrote to Mr. Schmieder's contact in Germany saying  
5 the matter is settled, my son and Hall's son have been  
6 advised to let the matter rest.

7 THE COURT: Graupner, Sr. is out because Graup-  
8 ner, Jr. then had--and I am not saying it is impossible,  
9 but what is his motive? Maybe there isn't any.

10 MR. DUFFY: How does Herman Graupner benefit  
11 from this? He said he had no financial interest when he  
12 testified.

13 THE COURT: You are not bound by his testimony.

14 MR. DUFFY: I am not suggesting he does have  
15 a financial interest, but he is talking about a lifelong  
16 friend apparently, has frequent business contacts with the  
17 man. I can see bonds of friendship and related bonds that  
18 may not be financial and which would encourage Mr. Graupner  
19 to want to confer a benefit of some sort on his friend.  
20 The Hall and Graupner families were friendly for many years,  
21 I take it. I gather Mr. Graupner is not particularly fond  
22 of Mr. Schmieder. That comes through from the correspondence  
23 that I have seen him write, and he was apparently very  
24 friendly and very close to Mr. Hall and his family.

25 THE COURT: Did Graupner, Sr. make any state-

1 rdsjp 5

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2 ments in the record which are relevant to this case?

3 MR. DUFFY: Mr. Graupner, Sr.'s statements are  
4 more in the nature of what led up to the actual transaction.  
5 It intends to document more the nature of the relationship  
6 between Mr. Hall, Sr. and Mr. Schmieder. The choice and  
7 the selection of the donee.

8 THE COURT: Did he have anything to do with  
9 the Attorney General's action?

10 MR. DUFFY: He participated. He gave a depo-  
11 sition in 1943, in 1945, and in 1950. All of those documents  
12 are before this Court.

13 THE COURT: Did he perjure himself in those  
14 proceedings?

15 MR. DUFFY: That is an interesting point. Let  
16 me deviate in answering your question. Mr. Martin pointed  
17 out the apparent lack of knowledge of Mr. Hall, about how  
18 he was involved, the true nature of his involvement. Mr.  
19 Graupner's transcripts are of a similar nature. There's  
20 a certain vagueness about it.

21 THE COURT: This is Sr.?

22 MR. DUFFY: Yes. But there is more of a story  
23 to be told but you just don't know which button to push  
24 or how to tie it out. Obviously, neither gentleman is  
25 really interested in having that story come out.



1 rdsjp 6

2 THE COURT: Why would not Graupner, Sr. be  
3 interested in having the story come out?

4 MR. DUFFY: There is a very good reason for that  
5 and it is suggested in one of Mr. Hall's responses to one of  
6 my questions, that Helen Dwyer and those acting with her  
7 were under great suspicion of being disloyal, of dealing  
8 with a German, trying to help a German conceal his property.  
9 I think there were possible criminal violations on this  
10 point.

11 The Government files tend to support that. They  
12 had to be vague. They couldn't come out and tell the facts.

13 The early depositions, 1943 and 1945, were given  
14 at a time when we were actually involved in armed conflict.

15 THE COURT: Then that is your motive. Your  
16 motive is that Graupner, Sr. and Mr. Hall were engaged in  
17 a conspiracy to defraud the United States and were covering  
18 it up.

19 MR. DUFFY: I am not characterizing what they  
20 did beyond what was necessary for us to show, your Honor--

21 THE COURT: I am just trying to answer in my  
22 own mind or in yours Mr. Martin's statement. You have to  
23 find at least Graupner, Jr. was engaged in a scheme to de-  
24 fraud Mr. Schmieder. Now, I don't know whether you have to  
25 find that as to Graupner, Sr. or not.

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1 rdsjp 7  
2 MR. DUFFY: It is not necessary to find a scheme  
3 to defraud Mr. Schmieder. I think it is only necessary for  
4 the Court to conclude that as between Schmieder and Hall,  
5 Mr. Graupner preferred to assist Hall.

6 THE COURT: Well, if he assisted he is in a  
7 scheme to defraud Schmieder and that's it.

8 MR. DUFFY: In our view of the case, an attorney  
9 cannot keep a gift from a client unless it is freely made  
10 with knowledge of all the relevant circumstances and there  
11 has to be an affirmative showing of no unfair advantage.  
12 So I don't think that the Court has to rise to an actual  
13 finding of a fraud or a conspiracy or something of that  
14 nature. I think you can find a great deal less and still  
15 be satisfied in finding for the plaintiff in this case.

16 All you really have to show is that there was  
17 an unfair advantage taken here. Apparently, if you believe  
18 the defendant, \$130,000, a goodly sum these days but with  
19 all the inflation that has been going on, if we were to  
20 take \$130,000 in 1938 and translate it up to current value,  
21 I can't put a precise figure on it but I am certain that  
22 that's a fund substantially in excess of a million dollars  
23 in today's standards.

24 THE COURT: I will assess it at \$800,000.

25 MR. DUFFY: All right, I'll still take it. But



1 rdsjp 8  
2 that fund of money was totally worthless. Schmieder might  
3 as well have thrown it away because he couldn't disclose an  
4 interest in it. Because of that the only thing Schmieder  
5 could do with it would be to give it to a donee of Hall  
6 and Graupner's choosing. Hall suggested Graupner's son.  
7 Graupner in response said that he didn't want his son  
8 figuring in Schmieder's affairs. Graupner said how about  
9 Hall's son? Hall said that, no, there is a relationship  
10 here of a client nature and he didn't want him involved that  
11 way.

12 Somehow this worthless fund of money that just  
13 had to be thrown away was given to Helen Dwyer.

14 Now, the possibilities I suggest are numerous.  
15 He didn't have one or two alternatives; he had many.

16 THE COURT: He could have given it to me, looked  
17 up my name in the telephone book.

18 MR. DUFFY: Including giving it to the American  
19 Red Cross or some worthy charity far more deserving of a  
20 windfall than Helen Dwyer.

21 THE COURT: Of course I suppose he might have  
22 been afraid that the charity would have mentioned it in some  
23 report.

24 MR. DUFFY: I can't honestly say what a charity  
25 does if you request that the donor remain anonymous, but I

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2 would rather suspect that they would honor that wish.

3 THE COURT: I am sure they would, but I'm just  
4 thinking, trying to put myself in his position, if I give it  
5 to the American Red Cross, while the American Red Cross  
6 board of directors will honor the wish, there are steno-  
7 graphers, accountants, and so on, all of whom may have  
8 friends in Nazi Germany.

9 Whereas with Mrs. Dwyer, she was only one per-  
10 son.

11 MR. DUFFY: If Kurt Schmieder instructed his  
12 attorneys to make an anonymous gift on his behalf to the  
13 American Red Cross, that could have been accomplished in  
14 such a way that no one would have known the source of those  
15 funds.

16 THE COURT: I'm sure it could have.

17 MR. DUFFY: I participated in that type of  
18 transaction to recognized charities and the check was drawn  
19 on the attorney's trust account and the check came from the  
20 law firm and all they did was transmit the trust account  
21 check. Gift taxes may have to be filed, tax returns would  
22 have to be filed and no tax would be due because it was a  
23 charitable bequest.

24 THE COURT: I am quite sure you are right. What  
25 I am just saying is it is not irrational to conclude that



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2 they may have preferred to deal with one woman whom they  
3 know would keep her mouth shut than with a group of people  
4 which whom any corporate transaction must be dealt with.

5 MR. DUFFY: The only reason she was important  
6 in this transaction was because she was the bridge, Helen  
7 Dwyer. She was the bridge between a man in distress. Hall  
8 admits that himself. The client who had to give it away  
9 was in distress, and his family. If you gave it to the  
10 American Red Cross it would have been lost to the whole  
11 family forever. Helen Dwyer, in her own letters, said  
12 shortly after the gift she began making wills leaving this  
13 property to the Hall family.

14 THE COURT: The mere fact that she gave it imme-  
15 diately to the Hall family doesn't seem to me to establish  
16 necessarily that at the time she accepted it she was acting  
17 for Hall. That is what you have to establish before you  
18 get to second base.

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2 MR. DUFFY: We have documents in evidence --  
3 as a matter of fact I have two of them before me. These  
4 are documents that you asked the Government to retype  
5 and they asked me to take them and retype them and to mail  
6 it back to them.

7 In 1935 before the incorporation of Stoneleigh,  
8 and here is Helen Dwyer typing these documents. Helen  
9 Dwyer's involvement in this transaction or the extent of  
10 her involvement in this transaction is never going  
11 to be known to us. She is dead, dead for five years now.  
12 Nobody is going to help us find out exactly how much she  
13 was involved.

14 THE COURT: Am I not correct that you have to  
15 bear your burden of proving that a gift, the gift to  
16 Helen Dwyer was in law and equity a gift to Mr. Hall  
17 before we get to the second point of Mr. Hall having  
18 the burden to explain it?

19 MR. DUFFY: Well, your Honor, I --

20 THE COURT: I'm not asking you whether you proved  
21 it. I say am I not right that you have to prove that point?

22 MR. DUFFY: Yes, that is a logical step. Whether  
23 you need to show legal and equitable, I think we are  
24 dealing basically with equitable consents.

25 THE COURT: Correct me if I am wrong because



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2        now is your chance. Don't wait for two weeks when my  
3        mind will be solidified. Unless you prove that the time  
4        that Mrs. Dwyer accepted that gift she was then acting  
5        for Mr. Hall, unless you prove that you are out of  
6        court. If she, two months later or two years later,  
7        decided she was going to hold this in trust for Mr. Hall,  
8        for whatever reason, that is too late from your point of  
9        view.

10                I will grant you if you can prove two months  
11        later she declared herself -- I'm not suggesting there  
12        is such proof -- but two months later she declared herself  
13        to hold it in trust for Mr. Hall, that might be very  
14        persuasive evidence on the fact that was her intention  
15        at the time she accepted it. Still what you have to prove  
16        is that she accepted the gift for Mr. Hall, don't you?

17                MR. DUFFY: Your Honor, I am not at all certain  
18        that is the case.

19                THE COURT: Then correct me on that.

20                MR. DUFFY: We have cases referred to in  
21        our pretrial memorandum to the effect that an innocent  
22        recipient of property may nevertheless be subject to  
23        the imposition of constructive trust where that recipient  
24        received the property in an improper manner and the  
25        recipient is unjustly enriched because of it.

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2 In substance, Mrs. Dwyer, even if she were wholly  
3 innocent, I contend, cannot benefit by someone else's  
4 wrongdoing. So I don't think that is a necessary conclusion  
5 in order to reach the result of the constructive trust  
6 that we are seeking here.

7 THE COURT: I guess what you have to prove is  
8 at the time Mrs. Dwyer received the gift it was Mr. Hall's  
9 intention that she accept it for him. She might not have  
10 known that until later, though.

11 MR. DUFFY: I think the facts will probably  
12 show that Mrs. Dwyer did very much know what was going on.  
13 Although Mr. Hall professes ignorance as to what was  
14 going on, I submit he was probably the only one.

15 But even if Mrs. Dwyer was in the same position  
16 as Mr. Hall, knowing fundamentally nothing until much  
17 later --

18 THE COURT: Assuming she knew everything that  
19 was going on, if she accepted the gift for herself --

20 MR. DUFFY: We should not permit her to prove  
21 it by someone else's wrongdoing.

22 THE COURT: Your problem is, that you are suing  
23 Mrs. Dwyer. It is not enough to show that she has  
24 wrongdoing because you are out of court on your own dirty  
25 hands. The only way you can prevail in this action is



1 rdrf 4

2 to cancel out your dirty hands with Mr. Hall's position  
3 as an attorney.

4 MR. DUFFY: Your Honor, I fail to understand  
5 completely your assertion that Mr. Schmieder comes into  
6 this court with dirty hands.

7 THE COURT: He certainly lied to the United  
8 States Government. He certainly --

9 MR. DUFFY: I don't know how we could conclude  
10 that.

11 THE COURT: You just read his statement under  
12 oath saying that this --

13 MR. DUFFY: I admit he gave that statement but  
14 what I don't admit --

15 THE COURT: You don't think it was a lie?

16 MR. DUFFY: What I don't admit is that he knew  
17 exactly how that statement was to be used.

18 THE COURT: Read it to me. How could he possibly  
19 think otherwise?

20 MR. DUFFY: In substance --

21 THE COURT: Don't get the substance. Get  
22 the document and read it to me and tell me how he could  
23 think it was true.

24 MR. MARTIN: I believe that is Exhibit A-2.

25 MR. DUFFY: It says, "The undersigned confirms

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2 herewith that it is understood by him that the gift of  
3 the plaintiff Bochman's bank balance in the New York Trust  
4 Company and of securities deposited there to Mrs. Dwyer  
5 is a voluntary, absolute and irrevokable gift without any  
6 obligation on Mrs. Dwyer."

7 THE COURT: How can that be true and your lawsuit  
8 have any effect.

9 MR. DUFFY: The circumstances surrounding this  
10 document are most suspicious.

11 THE COURT: I'm not talking about circumstances.  
12 You don't say your man is illiterate.

13 MR. DUFFY: No. I say Mr. Schmieder knew what  
14 he was signing.

15 THE COURT: How can that be true, and if it  
16 were true, how could he think it was true when he signed it?

17 MR. DUFFY: He thought it was true in my opinion  
18 because he was told by his attorneys that this is what  
19 he was going to have to do.

20 THE COURT: Listen, I'm your attorney and I told  
21 you it is Sunday. Does that mean you believe it is  
22 Sunday? You may believe you have to say it is Sunday  
23 but does that mean you believe it is Sunday? He is your  
24 attorney and it may convince Mr. Schmieder that is what  
25 he had to sign but how can you convince him it was true



1 if what you say is correct?

2 MR. DUFFY: Perhaps we are having a conceptual  
3 problem. I view this gift more in the gift tax sense.

4 THE COURT: Whatever sense you want, read that  
5 language and --

6 MR. DUFFY: Under the Internal Revenue Code  
7 you do not need donative intent to have a taxable gift.  
8 I am viewing Mr. Schmieder's statement in that sense.

9 THE COURT: Read it to me and tell me what it  
10 means in that sense.

11 MR. DUFFY: "The undersigned confirms herewith  
12 that it is understood by him that the gift of Mrs. Bochman's  
13 bank balance with the New York Trust Company and of  
14 securities deposited there to Mrs. Dwyer is a voluntary,  
15 absolute and irrevokable gift without any obligation to Mrs.  
16 Dwyer."

17 THE COURT: How is that true and this lawsuit  
18 have any basis? Or how could he think it was true and  
19 this lawsuit have any basis?

20 MR. DUFFY: This statement could be true,  
21 your Honor, and the lawsuit still have basis because  
22 of the circumstances --

23 THE COURT: Not because of circumstances. How  
24 could the statement be true and this lawsuit have any  
25

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basis if it was given to Mrs. Dwyer with no strings attached, no obligation on her part? How could this lawsuit have a basis?

MR. DUFFY: Your Honor, I have a Supreme Court decision, 324 U.S. 305 by Justice Frankfurter where he discusses the question of donative intent.

THE COURT: What does he say?

MR. DUFFY: And he says, in substance, that the common law considerations for non-body in the gift tax. He cites then Treasury Regulation 79, which was in effect in 1936, and I believe that this statement is fully consistent with the gift tax laws. This statement read against the background of the gift tax laws I think is consistent.

THE COURT: All right.

MR. DUFFY: I really feel that this particular issue is somewhat immaterial in view of the surrounding circumstances. I think they have to be considered here.

THE COURT: You keep on saying that. I wish you would tell me what you mean by that.

MR. DUFFY: This is a document that Mr. Hall's law firm needed desperately in order to succeed in this litigation. The document I don't think anyone really knows where it was prepared, who suggested it be prepared, but it certainly came to Mr. Schmieder from Mr. Graupner



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2 whom we know was the intermediary between Mr. Hall and  
3 Mr. Schmieder, and he was told that we need this for some  
4 litigation. Graupner needs it for some litigation. This  
5 is just a further reliance by Mr. Schmieder upon his  
6 attorneys, and that factor must be considered when this  
7 document is analyzed.

8 I would like to --

9 THE COURT: All that could be relevant on the  
10 issue that Mr. Hall is in no position to raise the  
11 question of unclean hands. How it can be relevant on  
12 the issue of what the document means I can't see.

13 MR. DUFFY: Your Honor, with all due respect,  
14 either I'm not understanding or you are not persuading me.

15 THE COURT: It says in plain language I've  
16 got no claim to the money in Mrs. Dwyer's hands.

17 MR. DUFFY: "Without obligation of Mrs. Dwyer."

18 THE COURT: This whole lawsuit is to impose  
19 an obligation on Mrs. Dwyer. Therefore, how you can say  
20 that is not inconsistent with the present position I don't  
21 know. You can say that Mr. Hall is in no position to  
22 raise it because he is a lawyer and he induced you to make  
23 it.

24 MR. DUFFY: This case is an appeal, your Honor,  
25 basically to the conscience of the Court, to equity.

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1  
2 MR. DUFFY: It is the equitable conscience of  
3 this Court that is going to act if it acts at all.

4 THE COURT: That is precisely correct. If you  
5 get the point over that this was a gift to Mr. Hall, he  
6 obviously -- and if that was induced by him, I understand  
7 Mr. Martin disputes that but I am assuming for the  
8 present argument that that document you just read was in-  
9 duced by Mr. Hall directly or indirectly.

10 Now, if that is correct and under my understanding  
11 of the law, if this is an action against Mr. Hall he cannot  
12 raise the question of unclean hands.

13 But if it is an action against Mrs. Dwyer there  
14 is no reason on God's earth why she can't raise the  
15 question of unclean hands.

16 MR. DUFFY: The entire matter would be solved,  
17 I take it, if there is sufficient basis for finding that  
18 Mrs. Dwyer was a participant.

19 THE COURT: That Mrs. Dwyer acted for Mr. Hall  
20 when she took the money, yes. That is what I started  
21 off by saying. Not necessarily sufficient basis for finding,  
22 but if I find it and am affirmed.

23 MR. DUFFY: Mr. Galisky reminds me that employees  
24 of law firms via the canons of ethics have some residual  
25 obligations to adhere to them. They just don't apply to the



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2 attorneys, they apply to the employees of the law firm.

3 THE COURT: I wasn't aware of that.

4 MR. DUFFY: Certainly, here was an employee  
5 who held a very close position of confidence and trust  
6 in relation to Mr. Hall, Sr.

7 THE COURT: That is all evidence.

8 MR. DUFFY: I would say that that applies with  
9 even greater force in her case.

10 THE COURT: Her closeness to Mr. Hall is certainly  
11 evidence in your favor.

12 MR. DUFFY: I'm saying that her closeness in  
13 a professional type relationship made her more subject  
14 to the canons of ethics than less subject.

15 THE COURT: You don't say the canons of ethics  
16 prevent an employee of a law firm from accepting a present  
17 if they want to, do you?

18 MR. DUFFY: I think that a present to an employee  
19 of a law firm is not too much different from a present to  
20 a spouse or an offspring of an attorney.

21 THE COURT: I don't think that is sound but go  
22 ahead. If there is a case to that effect, you can show  
23 it to me.

24 MR. DUFFY: There are certainly cases to the  
25 effect that an attorney who arranges for a gift to

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2 himself or a member of his family has the burden of  
3 explaining it. I don't think it extends the logic too  
4 far to say that an attorney who arranges for a gift to  
5 someone in close proximity to him has a similar burden.

6 Your Honor, we still have to come back to the  
7 main point here. This was an extraordinarily large  
8 sum of property. This was not a windfall. This was a  
9 fortune.

10 THE COURT: It was a hurricane fall.

11 MR. DUFFY: It is not like Helen won the number  
12 too y or got a 50 to 1 longshot at Belmont, things that  
13 we might think of as windfalls. If you recall that  
14 TV show, the Millionaire, and I forget the man's name,  
15 but I can still see him knocking on the door saying,  
16 "I have a check here for you for a million dollars  
17 tax free."

18 That is approximately what this money was worth  
19 in those days. I just think it stretches imagination  
20 or stretches credibility beyond belief to think that  
21 there was nothing that poor Schmieder could do other than  
22 give this property away to the deserving Helen Dwyer,  
23 an orphan who had had a very hard life.

24 THE COURT: That is your strongest point.  
25 I don't know whether it is enough to carry your burden



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2 of proof.

3 MR. DUFFY: If you examine the facts with addi-  
4 tional facts added to that that shortly after this gift  
5 Mrs. Dwyer acknowledges that she began making wills  
6 leaving all of that property to one or more members of  
7 the Hall family; that when Mr. Schmieder attempted to get  
8 in touch with Mr. Hall and Mr. Graupner in order to get  
9 in touch with Mrs. Dwyer, they both put up a stone wall,  
10 to use a phrase I have heard recently. And even to the  
11 point of saying to Mrs. Schmieder we will try to get in  
12 touch with Mrs. Dwyer and not do it. Saying to Mr.  
13 Schieder that we don't know where she is, and yet Mrs.  
14 Graupner knew very well where she was, or if he didn't  
15 know exactly where she was he knew well how to find out.

16 They were going to put a stone wall between  
17 Mrs. Dwyer and Mr. Schmieder.

18 Who is the only person who would benefit from  
19 that? Mr. Hall knew it. In 1955 he had to know it because  
20 he prepared a will. That will only deal with two members  
21 of the Hall family. Why? Because Mr. Hall testified  
22 that his sister Virginia, her husband was doing very  
23 well, but between 1955 and 1963 Virginia's husband stopped  
24 doing so well. Then Virginia came into the will.

25 The 1963 will had a trust provision for Mr.

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2 Hall's younger sister Adelaide. Why? He explained it.  
3 He said Adeladie's husband was a boat builder and wasn't  
4 doing that well and she would probably have given it to them  
5 and they would have credited her claims and the money  
6 should not go to pay off the husband's creditors.

7 In 1966 apparently Adelaide's husband was doing  
8 better, but the trust provision came out. There was a  
9 bequest to Amherst College that came out. Why? Because  
10 now there were members of the Hall family around who would  
11 get the money.

12 THE COURT: It is perfectly obvious she regarded  
13 that money as something she wanted to give to the Hall  
14 family.

15 MR. DUFFY: The changes in her testamentary  
16 intentions were not invoked by her needs or her desires,  
17 they were invoked by the needs and desires of the Hall  
18 family.



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2 THE COURT: It is perfectly obvious that she  
3 decided that this money was going to go to the Halls on her  
4 death, to be used for whatever was best for the Halls. That  
5 is clear. But does it necessarily follow that she had an  
6 understanding at the time she took it?

7 Of course, there can be a natural gratitude.  
8 Mr. Hall gave it to her, no question about that, was respon-  
9 sible for her getting it, so she might very well have thought,  
10 that being the case, that his family ought to benefit by it.

11 MR. DUFFY: Your Honor, I'm sure I am paraphras-  
12 ing it very broadly, but somewhere in the back of my mind  
13 I recall a phrase. I believe it was a judge commenting on  
14 the antitrust laws who said that when businessmen get to-  
15 gether under certain circumstances, it may fairly be presumed  
16 they didn't get together to pray, or words to that effect.  
17 And I think that these are very suspicious circumstances.

18 THE COURT: I agree.

19 MR. DUFFY: The client has lost a lot of money  
20 and the attorney who participated in that transaction and  
21 members of his family stand to gain an awful lot of money,  
22 and this Court should be suspicious.

23 THE COURT: I agree it is suspicious.

24 MR. DUFFY: And that suspicion should be suffi-  
25 cient to imply all the necessary elements that Mr. Hall

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has not explained. And he hasn't explained very much. He doesn't remember very much. He doesn't remember, hardly, a discussion with Helen Dwyer. He is sure it must have occurred, but he can't recall one.

The attorney has a burden to meet, and failing to meet it I think this Court--

THE COURT: It seems to me you first have the burden of showing that the gift was to Mr. Hall and not to Mrs. Dwyer. Once you've shown that, you are home free, as far as I can see.

MR. DUFFY: Who are the first two people considered for this gift? The evidence before your Honor will show that Helen Dwyer was an afterthought. Hall, Sr. said to Graupner, "What about your son?" Graupner said, "No. I don't want my son figuring in Schmieder's affairs."

Schmieder than said, or Graupner then said to Hall, Sr., "Well, how about your son?" And Hall, Sr. said, "No. I don't want him involved either."

Then dear Helen deserved the windfall, loyal to the Hall family from before 1938.

THE COURT: I agree with you it is very suspicious, and the question is: Is there enough suspicion to carry the burden of proof? I think that is the whole problem we've got here.



1  
2 MR. DUFFY: In matter of Putnam, which is a case  
3 not directly in point but certainly analogous, the Court  
4 said that absent a satisfactory explanation from the attor-  
5 ney--

6 THE COURT: As far as I can see, as soon as  
7 you've established that the gift to Dwyer was in fact, in  
8 equity, in law, whatever you want to call it, a gift to  
9 Hall, you are home free. That is the issue: Was it or  
10 wasn't it? There is certainly a lot of suspicion, but have  
11 you gotten that fact?

12 MR. DUFFY: Your Honor has not had the benefit  
13 yet of reading some of these documents.

14 THE COURT: No.

15 MR. DUFFY: Mr. Martin has. He obviously takes  
16 a different approach to them than I do.

17 THE COURT: That sometimes happens between law-  
18 yers.

19 MR. DUFFY: And it is indeed most suspicious to  
20 me, when here are two men considering their sons--

21 THE COURT: You don't have to tell me it is  
22 suspicious. I agree with you it is suspicious. But I  
23 don't think there is any point in our arguing it. We refined  
24 the issue. Isn't that what the case is all about? Have you  
25 proved that this gift was in law, in equity or in fact,

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2       whatever you want to call it, a gift not to Mrs. Dywer but  
3       to Mr. Hall?

4               MR. DUFFY: Let me raise another case which I  
5       can't cite but which will appear in our memorandum, and  
6       that is that the perpetrator of fraud or an undue influ-  
7       ence, which is a type of fraud, rarely lets his influence  
8       or his fraud surface any more than is absolutely necessary  
9       to accomplish the intended result.

10              Mr. Hall obviously would not come into Court  
11       today, nor his father if he was still alive, and admit out-  
12       right that, "I did in fact intend to commit a fraud." Those  
13       things have to be inferred from people who are going to try  
14       to keep them secret. They are not going to leave the ear-  
15       marks of fraud laying about. They are going to do it sur-  
16       reptitiously, they are going to do it behind the scenes,  
17       and they are going to do as little as possible.

18              And I think that the facts here certainly ex-  
19       cite suspicion and should invoke the conscience of equity.

20              THE COURT: We agree on that, and the question  
21       is: Is it enough to carry the burden of proof? I think  
22       that is the whole thing.

23              MR. DUFFY: I think the cases clearly show  
24       that in circumstances like these the Court is entitled to  
25       draw inferences, and those inferences are reasonable infer-



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2 ences, from these facts supporting plaintiff's contentions.

3 THE COURT: Well, that's what you each are going  
4 to address yourselves to. We can't resolve that. First of  
5 all, I don't yet know all the facts, but I think you've  
6 satisfied me that I've zeroed in on a crucial issue.

7 MR. MARTIN: Your Honor, am I now entitled to  
8 that little bit of rebuttal that I said would be no more  
9 than two minutes?

10 THE COURT: The rules say very brief.

11 MR. MARTIN: There are only two things I want  
12 to draw to your Honor's attention, one because you had men-  
13 tioned it in some prior proceeding.

14 But I do think, in a situation like this, going  
15 back over a long period, trying to reconstruct things, there  
16 are certain things that are written when there really is no  
17 motive on anybody's part, and I think there are two such  
18 documents here I want to draw your attention to.

19 One is a letter of June 11, 1947, which your  
20 Honor saw this morning, from William Graupner to Mr. Hall.  
21 This is a document, in plaintiff's view, between two co-  
22 conspirators.

23 THE COURT: Hall, Sr.?

24 MR. MARTIN: Hall, Sr. And that is the letter  
25 which says, and I'll summarize it rather than read it all:

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2 Prior to the gift of Mrs. Bochman to Mrs. Dwyer,  
3 Schmieder told me that she desired to make an absolute gift.  
4 I was concerned and I got a statement from him, and I am  
5 enclosing it, and that is the statement that I approved the  
6 arrangements for my sister-in-law which we discussed.

7 I remember we had put that in one of our summary  
8 judgment motions and you said that if that is the document  
9 that the Putney, Twombly firm would want, that's not what  
10 you would want as a lawyer, something to that effect.

11 This whole thing, the context of this letter  
12 written in '47, is when there is no sense of Graupner lying  
13 to Hall about what was involved.

14 THE COURT: That is a possibility, I assume?  
15 But he is sending him something that he had and that this  
16 was a document not that Hall had requested but this was  
17 something that Graupner had gotten because he was concerned  
18 at the time that he would have something. It was not some-  
19 thing the Putney firm requested, or anything like that.

20 MR. MARTIN: But I do think there is always the  
21 possibility that anything may be fabricated for a purpose,  
22 but I do--

23 THE COURT: What was the status when that letter  
24 was written? What was the status of the litigation?

25 MR. MARTIN: The Alien Property Custodian had



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2 not yet vested. The Treasury was blocked. The blocking  
3 was in effect. He was forwarding that document for use in  
4 that proceeding.

5 The other thing--

6 MR. DUFFY: Your Honor, let me just add--

7 MR. MARTIN: Let me finish.

8 The other thing that is somewhat interesting  
9 in the same respect is a document that was not necessarily  
10 written for litigation, but it particularly relates to this  
11 claim that Mr. Hall and Herman Graupner, for what reason  
12 I don't know, wanted to keep Mrs. Dwyer in the dark about  
13 Schmieder. It suggests one thing about Herman Graupner.

14 Why didn't he want to get involved? He was  
15 simply being bothered by this. It was of no consequence  
16 to him. But I want to put to bed this idea that Mrs. Dwyer  
17 was being kept in the dark.

18 One of the things you may recall we intro-  
19 duced was the exchange of correspondence between Schmieder  
20 and Judge Sanborn and then Judge Sanborn and Mrs. Dwyer,  
21 and Judge Sanborn wrote to Schmieder a letter of December  
22 13, 1967, the last paragraph of which said:

23 "There was never was any agreement. You have  
24 no claim of any sort against Mrs. Dwyer. She will not pay  
25 you one cent by way of settlement of any alleged claim

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2 either ex gratis, as a gift or by any other name or in any  
3 other way."

4 And he transferred that letter by his letter of  
5 December 13th to Mrs. Dwyer, which I won't read, but I  
6 would like to read briefly her response to him, just the  
7 first few lines.

8 "Dear Mr. S. Thanks for the copy of your letter  
9 to K.S., which states the situation very clearly. I do so  
10 appreciate your willingness to take on the unpleasant task  
11 on my behalf. It is a true relief to have someone who  
12 knows me and who knows the background of the people involved  
13 handling this affair for me."

14 I think that sums up her feeling. I think it  
15 underscores again the relevance of these people we called  
16 as character witnesses here, because Mrs. Dwyer knew she  
17 wouldn't get involved in anything and she knew the man for  
18 whom she worked, and whom she respected, Mr. Hall, would  
19 not, and she was glad to have Judge Sanborn, who knew them  
20 both, handling the matter with Mr. Schmieder.

21 THE COURT: All right.

22 MR. DUFFY: Your Honor, I just felt that Mr.  
23 Martin's characterization of the status of the Alien Property  
24 litigation at the time in question was an understatement,  
25 to say the least. By that time Mr. Graupner had been



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2 examined on two separate occasions before the Alien Property  
3 Custodian under oath, where transcripts were taken, and the  
4 Government's files will show that he was contacted many  
5 times by Government investigators.

6 So there is a full conflict at the time that  
7 statement was given.

8 MR. MARTIN: I don't disagree with that statement.

9 THE COURT: Will you, respectively, suggest find-  
10 ings of fact and conclusions which your memoranda?

11 MR. MARTIN: Surely. Would you want them sepa-  
12 rated simply as independent findings of fact and conclusions  
13 of law and then submit a memorandum in support of those?

14 THE COURT: Right. And when you submit findings  
15 of fact and conclusions of law, don't do as some counsel do,  
16 have me speculate where you got it from the record.

17 MR. MARTIN: No, your Honor. I would anticipate  
18 we will have exact citations to the record.

19 THE COURT: Okay. Then two weeks for the ori-  
20 ginal brief and one week for replies.

21 MR. DUFFY: That is the 15th and the 22nd?

22 THE COURT: Right.

23 Thank you, gentlemen.

24 (Case concluded.)

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